

No. 12380

United States
Court of Appeals
For the Ninth Circuit.

EDWARD JACKSON MURRAY,

Appellant,

vs.

LIEUTENANT GENERAL ALBERT C. WEDE-
MEYER, United States Army, Commanding
General, San Francisco Port of Embarkation,
Fort Mason, California,

Appellee.

Transcript of Record

Appeal from the United States District Court,
Northern District of California,
Southern Division.

FILED

NOV 25 1949

PAUL P. O'BRIEN, CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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In the District Court of the United States, in and for the Northern District of California, Southern Division.

No. 28431-R

In the Matter of the Application of
EDWARD JACKSON MURRAY, for a Writ of
Habeas Corpus.

PETITION

The petition of Edward Jackson Murray respectfully shows:

That the said Edward Jackson Murray is unlawfully imprisoned, detained and restrained of his liberty by the Commander of the United States Army Transport General Hodges, by the Commanding General of the San Francisco Port of Embarkation, Major General James A. Lester, Fort Mason, California, and by Lieutenant General Mark Clark, Commanding General of the Sixth Army, Presidio of San Francisco.

The summary of the steps leading to such imprisonment, detention, confinement and restraint are as follows:

That petitioner was taken into custody at San Francisco Port of Embarkation on or about February 3, 1947, by the United States Army authorities and returned to Japan under guard and placed in confinement incommunicado in the Eighth Army Stockade on February 18, 1947, and so remained for several weeks thereafter. The charges were

served upon petitioner on March 10, 1947, charging him with violation of the 95th Article of War (Charge I) in wrongfully appropriating to his own use about five hundred diamonds of the value of about \$200,000.00, property in the custody of the United States charged to him as custodial officer Headquarters Eighth United States Army, to be held for the United States; with violation of the 96th Article of War (Charge II) Specification I, in wrongfully appropriating to his own use about five hundred diamonds of the value of about \$200,000.00, property in the custody of the United States; Specification II the same act as to four diamonds of the value of about \$10,000.00; Specification III, wrongfully introducing into the United States about April 4, 1946, without paying custom duties thereon about five hundred diamonds of the value of \$200,000.00; Specification 4, on February 3, 1947, wrongfully executing a false customs declaration in failing to schedule four diamonds of the value of \$10,000.00; Specification 5, wrongfully introducing into the United States without paying customs duties thereon four diamonds of the value of \$10,000.00; that petitioner was arraigned and pleaded not guilty before a general court martial appointed by the Commanding General Eighth Army, April 14, 1947, and the trial continued with various continuances until May 29, 1947, when petitioner was found guilty of all charges and specifications with words of exception as to the value of the diamonds reducing the value

of the five hundred diamonds to \$84,000.00 and of the four diamonds to \$8,000.00, and was sentenced to be dismissed from the service, to forfeit all pay due and to become due and to be confined at hard labor at such place as the reviewing authority may direct for ten years. The Reviewing Authority, Commanding General Eighth Army approved the sentence, reduced the confinement to eight years and designated United States Disciplinary Barracks, Fort Leavenworth, Kansas, as place of confinement. The Board of Review in Judge Advocate General's office, March 4, 1948, found record legally sufficient to support the findings and sentence and on March 30, 1948, the Judge Advocate General recommended to the Secretary of the Army confirmation of the sentence, but reduction of the term of confinement to five years. Thereafter, the Secretary of the Army confirmed the findings and sentence as recommended. The petitioner is due to arrive at San Francisco Port of Embarkation aboard the United States Army Transport General Hodges on or about November 16, 1948, as a general prisoner enroute to United States Disciplinary Barracks, Fort Leavenworth, Kansas, and upon arrival will come under command of Commanding General, San Francisco Port of Embarkation and Commanding General Sixth Army.

That petitioner's imprisonment, detention, confinement and restraint are illegal and that the illegality thereof consists in this, to wit:

1. That while petitioner was in confinement at

Eighth Army Stockade, incommunicado, he was interrogated before trial by the Inspector General Eighth Army, his assistant, Colonel Gorman and Captain Carrier, Judge Advocate General's Department, at the outset of the interview the petitioner stated that he was unwilling to answer any questions without advice of counsel. Whereupon not only the Inspector General, but also Captain Carrier, representative of the Judge Advocate General's Department, told the petitioner that he was not entitled to advice of counsel and had to answer, etc. Thereupon he was subjected to a searching interrogation for many hours by all three, the result of which was used in evidence against him. These false statements as to petitioner's right to advice of counsel by the Inspector General and the Judge Advocate General officer resulted in a violation of petitioner's rights under the constitution, and any confession or admissions under all the circumstances cannot be considered voluntary.

2. After a twenty-four day continuance from the 18th day of April, 1947 to May 12, 1947, granted prosecution to obtain further evidence, petitioner's request for two weeks adjournment to obtain a necessary defense witness from Shanghai and order therefor was denied. (R 169). This was a clear violation of petitioner's rights guaranteed by the 6th Amendment and results in loss of court martial's jurisdiction and its judgment becomes void.

3. Petitioner was denied due process of law by

the use of perjured testimony of alleged diamond experts in identifying eight of the diamonds seized from petitioner as having been purchased for Koeki-Eidan, and it follows that his conviction is void.

4. There is not legal evidence to establish the corpus delicti as to the Charge I and Specifications 1 and 2 of Charge II.

The testimony, if believed, of the prosecution witnesses identified eight diamonds seized from petitioner, as having been purchased by Koeki-Eidan; that on October 18, 1945, nine thermos bottles of diamonds were delivered by Koeki-Eidan from Mitsui Trust Co. vaults to Captain Katz of the American Army, who with other American soldiers took them to the Bank of Japan. No receipt given. At Mitsui Trust Co. asked to show largest diamond, witness said largest diamond Koeki-Eidan had was 16K but it was not there, so showed a 12K or 13K diamond. Between October 18, 1945 and November 22, 1945, First Cavalry Division was in charge of Bank of Japan vaults. The 18.44K diamond identified as having been purchased for Koeki-Eidan in 1944, apparently was not turned over to Koeki-Eidan. There is no evidence that Koeki-Eidan turned over all its diamonds to the Bank of Japan vaults. There is not a scintilla of evidence as to what happened to the diamonds between October 18, 1945 and November 22, 1945; there is no evidence as to what or how many diamonds were turned over to the petitioner on November 22, 1945,

and finally no evidence of any shortage of diamonds in the Bank of Japan vaults.

5. The diamonds brought into the United States by petitioner were brought as gifts to his wife, and were not dutiable under public 633, 77th Congress, Act of June 27, 1942, 50 U. S. Code 801, 802. This act was implemented by War Department letter of August 23, 1945, A.G. 524 which, after quoting Act of June 27, 1942, stated "b Articles acquired abroad by the owner of the baggage for use by him as gifts after they are brought by him to the United States are for the personal use of the owner and are, therefore, entitled to duty free admission under Act of June 27, 1942.

Prosecution's own evidence shows that the four diamonds sold to M. S. Black were sold by petitioner's wife, Mrs. Lodema T. Murray, this together with affidavit of petitioner's wife, Lodema T. Murray, shows that petitioner brought diamonds legitimately to the United States as a gift to his wife. It follows that petitioner was illegally convicted under Specifications 3, 4 and 5 of Charge II.

6. The General Court Martial was illegally constituted and its judgment, therefore, void.

Major General William C. Chase, O-4739, was appointed a member and as senior officer was president of the General Court Martial before which petitioner was tried. Major General Chase was and had been since prior to the occupation of Japan, Commanding General of the First Cavalry Division;

that by virtue of his office he had a direct responsibility for the diamonds in the vaults of the Bank of Japan up to the time your petitioner was appointed custodian of said vaults, i.e., November 22, 1945. These facts were unknown to your petitioner at the time of his arraignment.

Major General Chase's failure to disclose these facts which would have given your petitioner grounds for challenge and relief of said Chase as a member, was prejudicial to petitioner, and leaves the Court illegally constituted and without jurisdiction.

7. Casting up all the errors committed, both in pre-trial procedure and during the trial, together with failure of proof has resulted in depriving your petitioner of the substance of a fair trial.

That no prior application has been made for a Writ of Habeas Corpus in regard to the detention and restraint complained of in this application,

Wherefore, your petitioner prays that a Writ of Habeas Corpus may be granted, directed to the said Major General James A. Lester, Commanding General of the San Francisco Port of Embarkation, Fort Mason, California, Lieutenant General Mark Clark, Commanding General of the Sixth Army, Presidio of San Francisco and the Commander United States Army Transport General Hodges, upon arrival at Fort Mason, California, and each of them to have the body of Edward Jackson Murray before your Honor at a time and place therein to be specified, to do and receive what shall then

and there be considered by your Honor concerning said petitioner, together with time and cause of his detention and said Writ; and that he, said Edward Jackson Murray, may be restored to his liberty.

/s/ JAMES T. DAVIS,
Attorney for Petitioner.

State of California,
City and County of San Francisco—ss.

James T. Davis, being duly sworn, on behalf of the petitioner above named says:

That he has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge except as to the matters which are therein stated on information or belief and as to those matters he believes it to be true; that said petitioner is absent from the City and County of San Francisco, where his attorney resides, and the facts are within the knowledge of this affiant who is the agent of the said petitioner, and therefore makes this affidavit.

Dated: November 12, 1948.

/s/ JAMES T. DAVIS.

Subscribed and sworn to before me this 12th day of November, 1948.

[Seal] /s/ MARION M. BENDER,

Notary Public in and for the City and County of
San Francisco, State of California.

My commission expires Dec. 24, 1950.

[Endorsed]: Filed Nov. 15, 1948.

[Title of District Court and Cause.]

ORDER TO SHOW CAUSE

On reading and filing the petition of Edward Jackson Murray charging Major General James A. Lester, United States Army, Commanding General of San Francisco Port of Embarkation, Fort Mason, California, Lieutenant General Mark Clark, United States Army, Commanding General Sixth Army, Presidio of San Francisco, the Commander of United States Army Transport General Hodges, and whomsoever with unlawfully imprisoning, detaining and restraining said petitioner of his liberty, and sufficient cause appearing therefor,

It Is Ordered that the said Major General Lester, Lieutenant General Clark and the said Commander of U. S. Army Transport General Hodges, be and appear before this Court in open Court, at the Court Room thereof on the 22nd day of November, 1948, at 2:00 o'clock p.m., to show cause why a Writ of Habeas Corpus should not be issued and this petitioner restored to full liberty as in said petition requested.

It Is Hereby Ordered that a copy of said petition, and of this order be served upon the said Major General Lester U. S. Army, Lieutenant General Clark, U. S. Army and the Commander, U. S.

Army Transport General Hodges at least three days before the said 22nd day of November, 1948.

Dated this 15th day of November, 1948.

/s/ MICHAEL J. ROCHE,

Judge of the District Court of
The United States.

[Endorsed]: Filed Nov. 15, 1948.

[Title of District Court and Cause.]

STIPULATION

It is hereby stipulated by and between the counsel for petitioner and respondents that the Order To Show Cause heretofore made returnable the 22nd day of November, 1948, shall be continued and made returnable the 13th day of December, 1948.

/s/ JAMES T. DAVIS,

Attorney for Petitioner.

UNITED STATES ATTORNEY,

By /s/ JOSEPH KARESH,

Assistant U. S. Attorney.

Dated: November 15, 1948.

It is so ordered this 15th day of November, 1948.

/s/ MICHAEL J. ROCHE,

Judge of the District Court.

[Endorsed]: Filed Nov. 15, 1948.

[Title of District Court and Cause.]

RETURN TO ORDER TO SHOW CAUSE

Come Now your respondents through Frank J. Hennessy, United States Attorney for the Northern District of California, and Joseph Karesh, Assistant United States Attorney for the Northern District of California, and for cause why a writ of habeas corpus should not issue herein, show as follows:

I.

Respondents, upon information and belief, admit that petitioner is restrained of his liberty, but deny that such restraint is in any way unlawful and say that they hold custody of the petitioner pursuant to Department of the Army General Court-Martial Orders No. 85, dated 19 April 1948, a copy of which is hereto annexed as Exhibit "A", and is made a part hereof; that petitioner is a general prisoner under said Orders and is enroute from Japan to the United States Disciplinary Barracks for confinement under said Orders.

II.

Further answering, respondents, upon information and belief, admit, in substance, the allegations in the petition alleged as "The Summary of the steps leading to * * * imprisonment, confinement and restraint * * *" but deny that petitioner was at any time held incommunicado.

III.

Further answering, upon information and belief, respondents deny each and every allegation in para-

graphs numbered 1 through 7 in the petition, and say that petitioner received a fair and impartial trial, and was at all times before, during and after said trial by general court-martial afforded every right and privilege to which he was entitled.

Wherefore respondents pray that the petition for writ of habeas corpus herein should be denied and the Order to Show Cause heretofore issued should be discharged.

/s/ FRANK J. HENNESSY,

U. S. Attorney.

/s/ JOSEPH KARESH,

Assistant U. S. Attorney.

EXHIBIT "A"

GCMO 85

Department of the Army

Washington 25, D. C., 19 April 1948

General Court-Martial

Orders, No. 85

Before a general court martial which convened at Yokohama, Japan, 14, 15, 16, 17, 18, April 1947, and 12, 13, 14, 15, 16, 26, 28, 29 May 1947, pursuant to paragraph 13, Special Orders, No. 55, Headquarters Eighth Army, United States Army, APO 343, 7 March 1947, amended by paragraph 2, Special Orders, No. 70, same headquarters, 25 March 1947, was arraigned and tried—

Colonel Edward J. Murray, O166578, Infantry.

Charge I: "Violation of the 95th Article of War."

Specification.—“In that Colonel Edward J. Murray, Headquarters, Far East Command, APO 500, having been assigned as Custodial Officer for Headquarters, Eighth United States Army, of the United States Vaults, Bank of Japan, did, on or about 20 March 1946, at or in the vicinity of Tokyo, Honshu, Japan, wrongfully, knowingly, willfully and without proper authority appropriate to his own use about Five Hundred (500) diamonds, of a value of about Two Hundred Thousand Dollars (\$200,000.00), property in the custody of the United States, charged to him as Custodial Officer, Headquarters Eighth United States Army, to be held for the United States.”

Charge II: “Violation of the 96th Article of War.”

Specification 1.—“In that Colonel Edward J. Murray, Headquarters, Far East Command, APO 500, did, at or in the vicinity of Tokyo, Honshu, Japan, on or about 20 March 1946, wrongfully appropriate to his own use the following property in the custody of the United States, viz, about Five Hundred (500) diamonds, of the value of about Two Hundred Thousand Dollars (\$200,000.00).”

Specification 2.—“In that Colonel Edward J. Murray, Headquarters, Far East Command, APO 500, did, at or in the vicinity of Tokyo, Honshu, Japan, on or about 19 January 1947, wrongfully appropriate to his own use the following property in the custody of the United States, viz, about Four (4) diamonds, of the value of about Ten Thousand Dollars (\$10,000.00).”

Specification 3.—“In that Colonel Edward J. Murray, Headquarters, Far East Command, APO 500, did, at or in the vicinity of San Francisco, California, United States of America, on or about 4 April 1946, without proper authority, wrongfully, knowingly and willfully introduce into the United States, without paying customs duty thereon, about Five Hundred (500) diamonds, of a value of about Two Hundred Thousand Dollars (\$200,000.00).”

Specification 4.—“In that Colonel Edward J. Murray, Headquarters, Far East Command, APO 500, did, at or in the vicinity of San Francisco, California, United States of America, on or about 3 February 1947, wrongfully, knowingly and willfully execute a United States Customs Declaration which he then and there well knew to be false in that he failed to schedule in said United States Customs Declaration Four (4) diamonds, of a value of about Ten Thousand Dollars (\$10,000.00), which he then and there introduced into the United States.”

Specification 5.—“In that Colonel Edward J. Murray, Headquarters, Far East Command, APO 500, did, at or in the vicinity of San Francisco, California, United States of America, on or about 3 February 1947, without proper authority, wrongfully, knowingly and willfully introduce into the United States, without paying customs duty thereon, about Four (4) diamonds, of a value of about Ten Thousand Dollars (\$10,000.00).”

Pleas

To all Specifications and Charges: “Not guilty.”

Findings

Of the Specification of Charge I: "Guilty, except for the words and figures 'about two hundred thousand dollars (\$200,000.00)', substituting therefor, respectively, the words and figures 'about eighty-four thousand dollars (\$84,000.00)'. Of the excepted words and figures, Not guilty; of the substituted words and figures, Guilty."

Of Charge I: "Guilty."

Of Specification 1, Charge II: "Guilty, except for the words and figures 'about two hundred thousand dollars (\$200,000.00)', substituting therefor, respectively, the words and figures 'about eighty-four thousand dollars (\$84,000.00)'. Of the excepted words and figures, Not guilty; of the substituted words and figures, Guilty."

Of Specification 2, Charge II: "Guilty, except for the words and figures 'about ten thousand dollars (\$10,000.00)', substituting therefor, respectively, the words and figures 'about eight thousand dollars (\$8,000.00)'. Of the excepted words and figures, Not guilty; of the substituted words and figures, Guilty."

Of Specification 3, Charge II: "Guilty, except for the words and figures 'about two hundred thousand dollars (\$200,000.00)', substituting therefor, respectively, the words and figures 'about eighty-four thousand dollars (\$84,000.00)'. Of the excepted words and figures, Not guilty; of the substituted words and figures, Guilty."

Of Specification 4, Charge II: "Guilty, except

for the words and figures 'about ten thousand dollars (\$10,000.00)', substituting therefor, respectively, the words and figures 'about eight thousand dollars (\$8,000.00)'. Of the excepted words and figures, Not Guilty; of the substituted words and figures, Guilty."

Of Specification 5, Charge II: "Guilty, except for the words and figures 'about ten thousand dollars (\$10,000.00)', substituting therefor, respectively, the words and figures 'about eight thousand dollars (\$8,000.00)'. Of the excepted words and figures, Not Guilty; of the substituted words and figures, Guilty."

Of Charge II: "Guilty."

Sentence

To be dismissed the Service, to forfeit all pay and allowances due or to become due, and to be confined at hard labor at such place as the reviewing authority may direct for ten (10) years.

The sentence was adjudged 29 May 1947.

The following is the action of the convening authority:

HEADQUARTERS EIGHTH ARMY

UNITED STATES ARMY

Office of the Commanding General

Yokohama, Japan

APO 343

15 July 1947

In the foregoing case of Colonel Edward J. Murray, O166578, Infantry, Headquarters Far East Command, APO 500, the sentence is approved but

the period of confinement at hard labor is reduced to eight (8) years in view of the war record of the accused. The United States Disciplinary Barracks, Fort Leavenworth, Kansas, or elsewhere as the Secretary of War may direct, is designated as the place of confinement. Pursuant to Article of War 48, the order directing the execution of the sentence is withheld.

[Signed] R. L. EICHELBERGER

[Typed] R. L. EICHELBERGER

Lieutenant General, USA

Commanding

The sentence having been approved by the convening authority; the record of trial forwarded under the provisions of Article of War 48; the record of trial having been examined by the Board of Review in The Judge Advocate General's Office; the Board of Review having submitted its opinion in writing to The Judge Advocate General; the opinion of the Board of Review and the recommendations of The Judge Advocate General having been transmitted directly to the Secretary of the Army under the provisions of Executive Order No. 9556, 26 May 1945, and having been laid before him, the following are his orders thereon:

In the foregoing case of Colonel Edward J. Murray (O-166578), Infantry, pursuant to the authority vested in me by Executive Order No. 9556, May 26, 1945, the sentence is confirmed, but the period of

confinement is reduced to five years. As thus modified the sentence will be carried into execution.

KENNETH C. ROYALL,
Secretary of the Army.

April 15, 1948

Colonel Edward J. Murray, O166578, Infantry, ceases to be an officer of the Army of the United States at midnight, 26 April 1948. The Branch United States Disciplinary Barracks, Camp Cooke, California, is designated as the place of confinement, or elsewhere as the Secretary of the Army may direct.

By Order of the Secretary of the Army:

OMAR N. BRADLEY,
Chief of Staff,
United States Army.

Official:

EDWARD F. WITSELL,
Major General The Adjutant General.

[Endorsed]: Filed Dec. 13, 1948.

[Title of District Court and Cause.]

ORDER FOR ISSUANCE OF WRIT OF
HABEAS CORPUS

This matter having come on regularly for hearing this 13th day of December, 1948, on the Petition for Writ of Habeas Corpus, the Order to Show Cause, the Return to Order to Show Cause, and the Traverse to the same, and counsel for the petitioner

and the respondent having in open Court this day been heard, and by oral stipulation agreed that if an Order for a Writ of Habeas Corpus should issue, with the consent of the Court, it should be made returnable on the 10th day of January, 1949, at 10:00 o'clock A.M., the matter thereupon having been submitted, and Good Cause Appearing Therefor,

It is Hereby Ordered that a writ of habeas corpus issue herein, directing the respondent, Brigadier General James A. Lester, United States Army, Commanding General, San Francisco Port of Embarkation, Fort Mason, California, to have the body of Edward Jackson Murray, together with the day and cause of his being taken and detained in this Court on said day and time above mentioned, and then and there to submit to and receive whatsoever the Court shall then and there consider in that behalf.

Dated: December 13, 1948.

/s/ MICHAEL J. ROCHE,
U. S. District Judge.

Issued Dec. 13, 1948.

[Endorsed]: Filed Dec. 13, 1948.

United States District Court, Southern Division,
Northern District of California
No. 28431-R

HABEAS CORPUS

The President of the United States of America
To Brigadier General James A. Lester, United

States Army, Commanding General, San Francisco Port of Embarkation, Fort Mason, California.

Greeting:

You Are Hereby Commanded, that the body of Edward Jackson Murray, the Petitioner herein, by you restrained of his liberty, as it is said detained by whatsoever names the said Edward Jackson Murray may be detained, together with the day and cause of being taken and detained, you have before the Honorable Michael J. Roche, Judge of the United States District Court in and for the Northern District of California, at the court room of said Court, in the City of San Francisco at 10 o'clock a.m., on the 10th day of January, 1949, then and there to do, submit to and receive whatsoever the said Judge shall then and there consider in that behalf; and have you then and there this writ.

Witness the Honorable Michael J. Roche, United States District Judge at San Francisco, California this 14th day of December, A.D. 1948.

C. W. CALBREATH,
Clerk.

By /s/ M. R. GRUBIC,
Deputy Clerk.

UNITED STATES MARSHAL'S RETURN
Northern District
Of California—ss:

Received the within writ the 14th day of Decem-

ber, 1948, and executed same on Major General James A. Lester at San Francisco, California on the 14th day of December 1948.

GEORGE VICE,
U. S. Marshal.

By /s/ HERBERT R. COLE,
Deputy Marshal.

[Received] U. S. Marshal's office S. F. Calif.
Dec. 14, 1948.

[Endorsed]: Filed Dec. 16, 1948 U.S.D.C.

[Title of District Court and Cause.]

RETURN TO WRIT OF HABEAS CORPUS

Comes now James A. Lester, Brigadier General, United States Army, respondent herein, through Frank J. Hennessy, United States Attorney for the Northern District of California, and Joseph Karesh, Assistant United States Attorney for the Northern District of California, and for return to writ of habeas corpus heretofore issued herein, shows as follows:

I.

That the person hereinafter called "the petitioner," on whose behalf the petition for writ of habeas corpus was filed, is detained by the respondent James A. Lester, Brigadier General, United

States Army, in his capacity as Commanding General, San Francisco Port of Embarkation, Fort Mason, California, under and by virtue of the Department of the Army General Court Martial Orders No. 85, dated 19 April, 1948, a copy of which has heretofore been annexed to Return to Order to Show Cause filed herein and made a part thereof as "Exhibit A"; that petitioner is a general prisoner under said orders and is enroute from Japan to a United States Disciplinary Barracks for confinement under said orders.

II.

That the General Court Martial had jurisdiction over the petitioner and the offenses alleged in the charges and specifications heretofore returned against him and on which he was tried and convicted.

III.

That respondent is informed and believes and further alleges that petitioner received a fair and impartial trial and was at all times before, during and after said trial by General Court Martial afforded every right and privilege to which he was entitled; that the sentence which he is now serving is a valid judgment now in full force and effect.

IV.

That the return to order to show cause heretofore filed herein is hereby referred to and incorporated herein as though set forth in full.

Wherefore respondent prays that the petition for

writ of habeas corpus herein should be denied and the writ of habeas corpus heretofore issued should be discharged.

/s/ FRANK J. HENNESSY,
United States Attorney.

/s/ JOSEPH KARESH,
Assistant U. S. Attorney.
Attorneys for
Respondent.

[Endorsed]: Filed Jan. 10, 1949.

[Title of District Court and Cause.]

ORDER PERMITTING FILING OF AMENDED
OR SUPPLEMENTAL PETITION

Upon motion of James T. Davis, Esq., counsel for petitioner, and good cause appearing therefor,

It is Hereby Ordered, that petitioner herein may file an amendment to his Petition for Habeas Corpus, or an Amended or Supplemental Petition, as the case may require, on or before Monday, February 21, 1949.

/s/ MICHAEL J. ROCHE,
U. S. District Judge.

[Endorsed]: Filed Jan. 31, 1949.

[Title of District Court and Cause.]

AMENDMENT TO PETITION FOR WRIT OF
HABEAS CORPUS

Comes now Edward Jackson Murray, and by leave of Court amends his petition for writ of habeas corpus by inserting after paragraph 6 therein, a new paragraph 6 (a) to read as follows:

6 (a) The President of the Court-Martial, Major-General, William C. Chase, during the trial and in the midst of the defendant's motions for findings of not guilty, personally sought new evidence "to get a conviction" thus abandoning his position as a fair and impartial judge and assuming the role of prosecutor. This action upon the part of Major-General Chase clearly constituted a denial of due process of law and, assuming but not admitting the original jurisdiction of the Court-Martial, the same was totally lost as a result of such action.

/s/ JAMES T. DAVIS,

Attorney for Petitioner.

State of California

City and County of San Francisco—ss.

Edward Jackson Murray, being duly sworn, deposes and says:

That he is the petitioner in the above-entitled action; that he has read the foregoing Amendment to Petition for Writ of Habeas Corpus and knows the contents thereof, that the same is true of his own knowledge, except as to the matters therein stated

on information or belief, and as to those matters he believes it to be true.

/s/ EDWARD JACKSON
MURRAY.

Subscribed and sworn to before me this 21st day of February, 1949.

[Seal] /s/ J. P. WIKT,
Deputy Clerk of the
District Court.

[Endorsed]: Filed Feb. 21, 1949.

[Title of District Court and Cause.]

SUPPLEMENTAL RETURN TO WRIT OF
HABEAS CORPUS

Comes now James A. Lester, Brigadier General, United States Army, respondent herein, through Frank J. Hennessy, United States Attorney for the Northern District of California, and Joseph Karesh, Assistant United States Attorney for the Northern District of California, and for a supplemental return to the writ of habeas corpus issued herein, incorporates the following allegations in the records of this proceeding as a part of the return to writ of habeas corpus heretofore filed herein on January 10, 1949, as though the same had therein been set forth in full:

V.

That respondent is informed and believes and further alleges that all the members of the General Court Martial, among whom was included Major

General William C. Chase, United States Army, and all the personnel of the prosecution, among whom was included Captain Andrew H. Bachison, United States Army, acted fairly and impartially and conducted themselves properly during all stages of the aforesaid General Court Martial proceedings.

/s/ FRANK J. HENNESSY,
U. S. Attorney.

/s/ JOSEPH KARESH,
Assistant U. S. Attorney.
Attorneys for
Respondent.

[Endorsed]: Filed Mar. 28, 1949.

[Title of District Court and Cause.]

ORDER DISCHARGING WRIT

This matter came on to be heard upon a writ of habeas corpus heretofore issued on December 14, 1948, and after a full consideration of all the evidence, both oral and documentary, and the arguments of counsel, it appears to the Court that the court-martial whereof petitioner complains had jurisdiction to try the petitioner and its sentence was within its power to pronounce. It is therefore by the Court

Ordered, upon findings of fact and conclusions of law, that the application of petitioner to be restored to his liberty is Denied; the writ heretofore issued on December 14, 1948, is Discharged; and petitioner is remanded to the custody of the respondent, James

A. Lester, Brigadier General, United States Army,
for service of his sentence.

Dated: June 24th, 1949.

/s/ MICHAEL J. ROCHE,
U. S. District Judge.

[Endorsed]: Filed June 24, 1949.

Copy handed to Karesh and one certified to Army
authority. Certified copy mailed to Davis, Attorney
for Petitioner.

[Title of District Court and Cause.]

STIPULATION EXTENDING TIME WITHIN
WHICH TO FILE PROPOSED FINDINGS

It is hereby stipulated by and between Frank J.
Hennessy, Esq., United States Attorney for the
Northern District of California, and James T.
Davis, Esq., attorneys for the respective parties
herein, that the time within which proposed counter-
finding of fact and conclusions of law may be filed
herein is hereby extended to and including the 25th
day of August 1949.

Dated: This 5th day of August, 1949.

FRANK J. HENNESSY, ESQ.,
U. S. Attorney.

By /s/ JOSEPH KARESH,
Assistant U. S. Attorney.

/s/ JAMES T. DAVIS.

Approved:

/s/ MICHAEL J. ROCHE,
U. S. District Judge.

[Endorsed]: Filed Aug. 8, 1949.

[Title of District Court and Cause.]

STIPULATION

It is hereby stipulated by and between Frank J. Hennessy, United States Attorney, and James T. Davis, Attorney for the petitioner herein, that the petitioner's time to file proposed Findings of Fact and Conclusions of Law herein is extended from the 25th day of August, 1949, until the 31st day of August, 1949.

Dated: August 25th, 1949.

FRANK J. HENNESSY,
U. S. Attorney.

By /s/ JOSEPH KARESH,
Assistant U. S. Attorney.

/s/ JAMES T. DAVIS,
Attorney for Petitioner.

Approved:

/s/ MICHAEL J. ROCHE,
U. S. District Judge.

[Endorsed]: Filed Aug. 24, 1949.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS
OF LAW

The above-entitled cause having been submitted by the parties hereto, James T. Davis, Esquire, appearing as counsel for petitioner, and Frank J. Hennessy, Esquire, United States Attorney for the

Northern District of California, Joseph Karesh, Esquire, Assistant United States Attorney for the Northern District of California, and Nicholas R. Voorhis, Lieutenant Colonel, JAGC, Office of The Judge Advocate General, Washington 25, D. C., appearing as counsel for respondent, and evidence both oral and documentary having been introduced and the petitioner having been heard in person under a writ of habeas corpus duly issued, and the Court being fully advised in the premises, makes its Findings of Fact and Conclusions of Law as follows:

Findings of Fact

I.

That petitioner is detained by respondent James A. Lester, Major General, United States Army, Commanding General of the San Francisco Port of Embarkation, Fort Mason, California, under and by virtue of General Court-Martial Orders No. 85, Department of the Army, dated April 19, 1948;

II.

That petitioner, then a Colonel in the Army of the United States, was, on May 29, 1947, after trial of thirteen days from April 14, 1947 to May 29, 1947, convicted in Japan by a general court-martial appointed and convened by the Commanding General of the Eighth United States Army of the following offenses:

1. Misappropriation of about five hundred (500) diamonds of a value of about \$84,000, property in the custody of the United States in his charge as

custodial officer for the United States, on or about March 20, 1946, in violation of Article of War 95 (Charge I, Specification 1),

2. Misappropriation of about five hundred (500) diamonds of a value of about \$84,000 in the custody of the United States, on or about March 20, 1946, in violation of Article of War 96 (Charge II, Specification 1),

3. Misappropriation of four (4) diamonds of a value of about \$8,000 in the custody of the United States, on or about January 19, 1947, in violation of Article of War 96 (Charge II, Specification 2),

4. Smuggling about five hundred (500) diamonds into the United States of a value of about \$84,000 without paying customs duty, on or about April 4, 1946, in violation of Article of War 96 (Charge II, Specification 3),

5. Wilful execution of a false United States Customs Declaration knowing it to be false in that he failed to schedule four (4) diamonds of a value of about \$8,000 on or about February 3, 1947, in violation of Article of War 96 (Charge II, Specification 4), and

6. Smuggling about four (4) diamonds into the United States of a value of about \$8,000 without paying customs duty, on or about February 3, 1947, in violation of Article of War 96 (Charge II, Specification 5);

that petitioner was sentenced by said general court-martial "To be dismissed the Service, to forfeit all pay and allowances due or to become due, and to be confined at hard labor at such place as the reviewing

authority may direct for (10) years''; that the record of petitioner's trial was reviewed by the Staff Judge Advocate of the Eighth United States Army and thereafter, on July 15, 1947, the Commanding General of the Eighth United States Army, as reviewing authority, approved the sentence but reduced the period of confinement to eight (8) years; that thereafter, on March 4, 1948, the Board of Review in the Office of The Judge Advocate General of the Army, after considering oral argument and written briefs by counsel for petitioner, in a lengthy written opinion held the record of trial legally sufficient to support the findings of guilty and the sentence and to warrant confirmation thereof; that The Judge Advocate General of the Army, on March 30, 1948, concurred in the opinion of the Board of Review and recommended to the Secretary of the Army that the sentence be confirmed, but recommended that the period of confinement be reduced to five years; that the Secretary of the Army, acting pursuant to and in accordance with Executive Order No. 9556, May 26, 1945, and Article of War 48, on April 15, 1948, confirmed the sentence, but reduced the period of confinement to five years and ordered the sentence as modified, to be carried into execution; that the sentence, as modified, was promulgated in General Court-Martial Orders Number 85, Department of the Army, dated April 19, 1948; that petitioner is now engaged in serving the above period of confinement, as reduced;

III.

That in this proceeding, the petitioner challenges

the legality of his present confinement and alleges that the sentence on trial by court-martial is void and of no effect because:

1. The president of the general court-martial, Major General William C. Chase, failed to disclose as a ground of challenge that as Commander of the First Cavalry Division he had a direct responsibility for the diamonds and precious metals seized from the Japanese Government and its agencies;

2. The president of the court-martial assumed the role of prosecutor which was a denial of due process causing a loss of jurisdiction in the court-martial;

3. Specifications 3, 4 and 5 of Charge II fail to state a public offense;

4. There is no evidence in support of Charge I and its specification or of Specification 1 and 2 of Charge II;

5. The denial of petitioner's motion for a continuance was a denial of due process causing a loss of jurisdiction in the court-martial;

6. Testimony of certain witnesses was perjured, was obtained by duress and coercion which was a denial of due process;

7. Admission in evidence of confessions or admission of the petitioner was error because they were involuntary and were obtained by coercion and compulsion, amounting to a denial of due process of law;

8. Consideration by the Board of Review and The Judge Advocate General of the report of in-

investigation by The Inspector General was in Violation of Article of War 501½ and constituted a denial of due process of law;

9. Investigation by the Trial Judge Advocate during a recess in the trial was in violation of Article of War 70 and was a denial of due process;

10. The totality of errors in pre-trial procedure and during the course of trial together with a failure of proof constituted a denial of the substance of a fair trial to petitioner;

IV.

That, with reference to petitioner's first contention, the court finds that the petitioner and his special defense counsel had full knowledge of the facts concerning the qualification of Major General William C. Chase, United States Army, to serve as President and member of said general court-martial and of the fact that the said Major General Chase had commanded a cavalry division which had seized the Bank of Japan and its contents prior to the time the petitioner had assumed custodial duties incident to the subject matter of the court-martial charges; that the petitioner and his special defense counsel freely, voluntarily, intelligently, intentionally, understandingly and competently did not object to any member of the general court-martial then convened, including the said Major General Chase, and did not challenge any member of the general court-martial either for cause or peremptorily; that there was no conflict in interest between the said Major General Chase and the petitioner;

that the said Major General Chase was not disqualified to serve as President and member of the General court-martial that tried petitioner and that his presence thereon did not prejudice the petitioner's interests or affect the legality of the constitution of the general court-martial, or affect the legality of petitioner's trial, conviction and sentence by said general court-martial;

V.

That, with reference to petitioner's second contention, the court finds that the President of the said general court-martial, Major General William C. Chase, acted properly as such and did not assume the role of prosecutor, as alleged by petitioner; that in endeavoring to bring all available evidence before the general court-martial he properly performed his duty as President of said general court-martial and took appropriate action in compliance with the duties of the court-martial as prescribed in paragraph 75a (page 58) of the Manual for Courts-Martial, U. S. Army, 1928; that the action of the President of the general court-martial, concerning which the petitioner complains did not deny petitioner due process of law or affect the jurisdiction of said general court-martial;

VI.

That, with reference to petitioner's third contention, the court finds that Specifications 3, 4 and 5 of Charge II allege acts and omissions of the petitioner which constitute violations of Article of War 96 (10 U.S.C. 1568); that the general court-martial,

the reviewing authority and the Army appellate reviewing agencies have each ruled on the sufficiency of the pleadings and held them sufficient; that the petitioner was advised by the specifications of the offenses for which he was to be tried and that he was sufficiently apprised of the offenses in order intelligently to admit, deny, or plead specially to them and that he could plead his conviction as a bar to a subsequent prosecution for the same offenses;

VII.

That, with reference to petitioner's fourth contention, the court finds that the findings of guilty by the general court-martial of Charge I and its specification and of Specifications 1 and 2 of Charge II and Charge II were predicated upon abundant evidence before the court-martial; that the determination of the petitioner's guilt or innocence of the offenses charged on the evidence before it is clearly within the jurisdiction of the general court-martial and is not subject to review by this court in a habeas corpus proceeding;

VIII.

That, with reference to petitioner's fifth contention, the court finds that on April 18, 1947, the general court-martial continued petitioner's trial until May 12, 1947; that such continuance was taken on motion of the prosecution, to which the defense stated that it had no objection, with the understanding that when the court-martial reconvened both sides would be ready to proceed; that, in overruling the motion of the defense on May 12, 1947, for a

further continuance of two weeks for the purpose of obtaining a diamond expert to assist defense counsel in conducting cross-examination, and not to obtain a witness as alleged, the general court-martial acted properly in the exercise of its judicial discretion; that thereafter, on May 16, 1947, after the prosecution had rested, the general court-martial granted a continuance of ten days, on motion of the defense, for the purpose of preparing petitioner's defense; that thereafter, on May 26, 1947, a further continuance until May 28, 1947, was granted the defense due to the illness of one of petitioner's counsel; that the action of the general court-martial in granting and denying requested continuances was fair, did not constitute a denial of due process of law to the petitioner and did not affect the jurisdiction of the court-martial or the legality of petitioner's trial and conviction;

IX.

That, with reference to petitioner's sixth contention, the court finds that there is no evidence that perjured testimony was procured or presented by the prosecution in petitioner's trial by court-martial, or that any evidence against the petitioner was procured by duress or by coercion; that the petitioner has failed to sustain the burden of proving that any evidence before the court-martial was perjured, or procured by duress or coercion, or that the prosecution had knowledge of its falsity; the court further finds that the petitioner was not denied due process of law;

X.

That, with reference to petitioner's seventh contention, the court finds that the petitioner was properly informed of his rights, including his rights under Article of War 24 (10 U.S.C. 1495); that petitioner, with full knowledge of his rights, voluntarily, and not being subject to any threats, force, coercion or compulsion, made certain confessions or admissions; that the general court-martial had full authority and jurisdiction to determine the admissibility of petitioner's pre-trial statements; that the admission in evidence by the general court-martial of such confessions or admissions of the petitioner was not error and did not deny petitioner due process of law;

XI.

That, with reference to petitioner's eighth contention, the court finds that counsel for the petitioner presented to the Board of Review and The Judge Advocate General a brief and three affidavits containing allegations which were considered by the Board of Review to be of sufficient gravity as to require investigation into their veracity; that, as a result of such accusations made on behalf of the petitioner, an investigation was initiated by The Inspector General, United States Army, into the truth of the matters set forth in the affidavits and the report of said investigation was submitted to and considered by the Board of Review and The Judge Advocate General; that the petitioner, having brought to the attention of the Board of Review

matters dehors the record and urged that they be considered, is responsible for the action of the Board of Review and The Judge Advocate General in considering the report of investigation of The Inspector General; that the action of the Board of Review and The Judge Advocate General, both in requesting the investigation and considering the report, was not violative of Article of War 50 $\frac{1}{2}$ (10 U.S.C. 1522), was in the interests of justice, and did not deprive petitioner of due process of law;

XII.

That, with reference to petitioner's ninth contention, the court finds that the Trial Judge Advocate interviewed prospective witnesses during a recess in petitioner's trial; that during said interviews, personnel for the defense were at all times at liberty to be present and participate, and did participate occasionally; that the action of the Trial Judge Advocate was in accord with the provisions of paragraph 75a (page 58), Manual for Courts-Martial, U. S. Army, 1928, was not violative of Article of War 70 (10 U.S.C. 1542) with reference to pre-trial investigations, and did not constitute a denial of due process of law to the petitioner;

XIII.

That, with reference to petitioner's tenth contention, the court finds that the petitioner was ably and aggressively defended by effective and competent counsel at his trial by general court-martial;

that petitioner was accorded a full, complete and fair trial; that subsequent to trial, petitioner's allegations concerning the members of the general court-martial and personnel of the prosecution were thoroughly and fairly investigated and properly considered by the reviewing authority and the Army appellate reviewing agencies; that the pre-trial procedure, trial and appellate review proceedings were applied to the petitioner in a fundamentally fair manner; that the petitioner was not denied due process of law;

XIV.

That the petitioner has failed to sustain the burden of proving the allegations of his petition;

XV.

That the petitioner has failed to exhaust the administrative remedies provided by Congress before recourse to this court in a habeas corpus proceeding, in that petitioner has not petitioned The Judge Advocate General for a new trial, or other relief, under the provisions of Article of War 53 (Sec. 230, Title II, Public Law 759, 80th Congress; act of June 25, 1948, 62 Stat. 627) and the procedure established by the President in Chapter XXII of the Manual for Courts-Martial, U. S. Army, 1949.

Conclusions of Law

I.

That the general court-martial that tried the petitioner in Japan from April 14, 1947 to May 29, 1947, was legally appointed by an officer empowered under law to appoint it;

II.

That said general court-martial was legally com-

posed with respect to the number and competency of the officers appointed as members thereof;

III.

That Major General William C. Chase, United States Army, was legally qualified to serve as President and member of said general court-martial and his service thereon did not affect the legality of the constitution of the court-martial, its jurisdiction, or the legality of petitioner's trial, conviction and sentence by said general court-martial;

IV.

That the said general court-martial was invested by statute with the power to try the petitioner and the offenses charged against said petitioner;

V.

That the said general court-martial did not exceed its lawful powers in the trial and conviction of the petitioner;

VI.

That the petitioner has failed to sustain the burden of proving that the President of said general court-martial acted improperly and assumed the role of prosecutor;

VII.

That the President of said general court-martial acted legally and properly and that none of his actions as President and member of said general court-martial during petitioner's trial deprived petitioner of a fair trial or denied petitioner due process of law;

VIII.

That Specifications 3, 4 and 5 of Charge II state offenses in violation of Article of War 96 (10 U.S.C. 1568) ;

IX.

That the said general court-martial had abundant evidence before it upon which to base its findings of guilty of the offenses charged against the petitioner under Charge I and its specification and under Charge II and its specifications ;

X.

That the petitioner's conviction after a full and fair trial before a general court-martial, and the determination of the facts and law in connection with such conviction by the military authorities are not subject to review in a habeas corpus proceeding ;

XI.

That the action of the said general court-martial in denying one of petitioner's motions for a continuance was a matter committed to its sound judicial discretion, did not constitute an abuse of discretion and did not constitute a denial to the petitioner of due process of law ;

XII.

That the sentence adjudged by said general court-martial, as approved and promulgated by the reviewing and confirming authorities, was authorized by law ;

XIII.

That the petitioner has failed to sustain the bur-

den of proving that testimony adduced by the prosecution was perjured and obtained by duress or coercion;

XIV.

That the testimony adduced by the prosecution against the petitioner was not perjured or obtained by duress or coercion;

XV.

That the petitioner has failed to sustain the burden of proving that his confessions or admissions were involuntary or obtained by coercion and compulsion;

XVI.

That the admission in evidence of petitioner's confessions or admissions was a matter committed to the sound judicial discretion of said general court-martial, did not constitute an abuse of discretion and did not constitute a denial to the petitioner of due process of law;

XVII.

That consideration by the Board of Review and The Judge Advocate General of the report of investigation by The Inspector General, initiated as the result of the presentation by the petitioner of certain accusations, was a valid exercise of the review authority vested in said officers by law, did not constitute a violation of Article of War 501½ (10 U.S.C. 1522) and did not constitute a denial to the petitioner of due process of law;

XVIII.

That the investigation conducted by the Trial Judge Advocate during a recess in the trial was a

lawful exercise of the authority vested in said officer, was not in violation of Article of War 70 (10 U.S.C. 1542) and did not constitute a denial to the petitioner of due process of law;

XIX.

That the petitioner has failed to sustain the burden of proving that he was denied due process of law before said general court-martial;

XX.

That the petitioner was not denied due process of law before said general court-martial;

XXI.

That the petitioner has failed to sustain the burden of proving that he was denied any of his constitutional rights before the said general court-martial;

XXII.

That the petitioner was not denied any of his constitutional rights before the said general court-martial;

XXIII.

That there is no merit to the petition for writ of habeas corpus on file herein;

XXIV.

That petitioner is now in the lawful custody and control of the respondent and is not now entitled to his discharge.

Dated: this 1st day of September, 1949.

/s/ MICHAEL J. ROCHE,
U. S. District Judge.

[Endorsed]: Filed Sept. 1, 1949.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Edward Jackson Murray, Petitioner in the above entitled proceeding, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the order of the Honorable Michael J. Roche, United States District Judge for the Northern District of California, discharging the Writ of Habeas Corpus, in the above entitled proceeding, effective on September 1, 1949.

Dated: This 29th day of September, 1949.

/s/ JAMES T. DAVIS,
Attorney for Petitioner.

Receipt of copy acknowledged.

[Endorsed]: Filed Sept. 29, 1949.

[Title of District Court and Cause.]

STATEMENT OF POINTS UPON WHICH
APPELLANT INTENDS TO RELY UPON
APPEAL

1. That the Honorable Michael J. Roche, United States District Judge for the Northern District of California, should have granted the petition for writ of habeas corpus filed by appellant before him.
2. That the Honorable Michael J. Roche, United States District Judge for the Northern District of California, erred when he ordered the writ issued December 14, 1948, discharged.

3. That the Honorable Michael J. Roche, United States District Judge for the Northern District of California, erred when he ordered appellant remanded to custody.

4. That the Honorable Michael J. Roche, United States District Judge for the Northern District of California, erred when he found that the General Court-Martial by which appellant was convicted had jurisdiction to try and sentence appellant.

5. That the Honorable Michael J. Roche, United States District Judge for the Northern District of California, erred when he found that appellant was not denied due process of law.

6. That the Honorable Michael J. Roche, United States District Judge for the Northern District of California, erred when he found that the appellant failed to sustain the burden of proving the allegations of his petition.

7. That the Honorable Michael J. Roche, United States District Judge for the Northern District of California, erred when he found that the petition failed to exhaust the administrative remedies provided by Congress.

8. That the Honorable Michael J. Roche, United States District Judge for the Northern District of California, erred when he found that the determination of the facts and law in connection with such conviction by the military authorities are not sub-

ject to review in a habeas corpus proceeding.

Dated: This 29th day of September, 1949.

/s/ JAMES T. DAVIS,
Attorney for Appellant.

Receipt of copy acknowledged.

[Endorsed]: Filed Sept. 29, 1949.

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF RECORD
ON APPEAL UNDER RULE 75(a)

Edward Jackson Murray, Petitioner-Appellant herein, hereby designates the complete record and proceedings in the above-entitled cause, including all exhibits, for inclusion in the record on appeal.

Dated: This 20th day of September, 1949.

/s/ JAMES T. DAVIS,
Attorney for Petitioner-
Appellant.

Receipt of copy acknowledged.

[Endorsed]: Filed Sept. 29, 1949.

[Title of District Court and Cause.]

ORDER RE: EXHIBITS ON APPEAL

Good Cause Appearing Therefor, it is hereby Ordered that Exhibits Nos. 1-A, 1-B and 2 in the above captioned matter may be sent to the Court of Appeals for the Ninth Circuit in their original

form and in such form may be considered a part of the Record on Appeal.

Dated: October 10th, 1949.

/s/ MICHAEL J. ROCHE,
U. S. District Judge.

[Endorsed]: Filed Oct. 10, 1949.

In the Southern Division of the United States District Court for the Northern District of California

No. 28431-R

In the Matter of the Application of EDWARD JACKSON MURRAY, for a Writ of Habeas Corpus.

Before: Hon. Michael J. Roche,
Judge.

Appearances:

JAMES T. DAVIS, ESQ.,

For the Applicant.

JOSEPH KARESH, ESQ.,

Assistant U. S. Attorney,

For the Respondent. [1*]

HEARING ON THE APPLICATION

Monday, March 28, 1949

The Clerk: In the matter of Edward J. Murray, Habeas Corpus.

Mr. Karesh: Ready.

Mr. Davis: Ready.

The Court: Proceed, gentlemen.

Mr. Karesh: May it please your Honor, this case was continued until this morning by stipulation

* Page numbering appearing at top of page of Reporter's original Transcript of Record.

of counsel, and at this time we ask leave to file a supplemental return to the writ of habeas corpus on behalf of the respondent, Brigadier General James A. Lester, of the United States Army. I think there is no objection.

Mr. Davis: There is no objection, and may it be stipulated, your Honor, that our petition and amended petition be considered the traverse to this return?

Mr. Karesh: That is agreeable.

The Court: Let the record so show.

Mr. Karesh: I have served a copy of the supplemental return and the writ on Mr. Davis and the petitioner, your Honor. Mr. Murray has been produced again by General Lester, the respondent.

Mr. Davis: If it please the Court, this is a petition for writ of habeas corpus on the part of Edward Jackson Murray. I worked on this matter for many months, your Honor, and I have raised several points in my petition, some of which are factual and some of which are legal. I am confident and satisfied [2] myself that it would be impossible for your Honor to properly evaluate the petition without having the entire record of the trial available to you because of the various points which have been raised. On the other hand, your Honor, I realize it would be an imposition upon the court and would necessitate a great deal of time to read portions of the record, or the entire record, which are completely immaterial to our position here. It is my suggestion, and I made this suggestion to Mr. Ka-

resh, that we do the following, that we offer the entire record——

Mr. Karesh: You mean the petitioner offers?

Mr. Davis: The petitioner offers the entire record of the trial, which includes the trial and the proceedings before the Board of Review, and the investigation—the entire trial up until the actual confirmation of the sentence by the Secretary of War, with the understanding that I will then write a brief in support of the points raised in my petition, calling your Honor's attention to the specific portions of the record which your Honor would have to consider, and then Mr. Karesh, of course, would counter in his brief, and if there is any contradiction in the record, call your Honor's attention to those portions of the record in our argument upon the law. I am firmly convinced, your Honor, that due to the points I have raised and their nature, that it would be impossible for your Honor to consider the matter properly and investigate [3] it fully without having that record available to your Honor. So with that in mind, your Honor, at this time I offer the entire record of the trial of Colonel Edward J. Murray, first a photostatic copy of the record of trial by general court martial convened at Yokohama from April 14 to May 29, 1947, as Exhibit 1-A.

Mr. Karesh: Together with the accompanying papers—would you read the rest of it?

Mr. Davis: I will read the certification:

“I hereby certify that the attached is a photostatic copy of the record of trial of Colonel Edward

J. Murray, O166578, by a general court martial which convened at Yokohama, Japan, 14 April to 29 May, 1947, together with accompanying papers, official copy of general court martial orders No. 85, Department of the Army, dated 19 April, 1948, Opinion of the Board of Review, dated 4 March, 1948, and First Endorsement of The Judge Advocate General, dated 3 March, 1948, on file in the office of the Judge Advocate General."

That is Exhibit 1-A.

The Court: There is no objection?

Mr. Karesh: There is no objection, your Honor. Perhaps it is immaterial, but since there has been such a contention made, a strong contention, that the trial was not fair, and we believe it was, it might as well go in.

The Court: It will be admitted and marked. [4]

(The record referred to was thereupon received in evidence and marked Petitioner's Exhibit 1-A.)

Mr. Davis: We offer as Exhibit 1-B the following record, of which I will read the certification:

"I hereby certify that the attached is a photostatic copy of the report of investigation made by the Office of the Inspector General, General Headquarters, Far East Command, together with accompanying papers concerning allegations in the trial by general court martial of Colonel Edward J. Murray, O166578, on file in the office of the Inspector General."

We offer that as Exhibit 1-B.

Mr. Karesh: I may say this, your Honor, while the appeal is not part of due process, none the less we will have no objection to the offer of the report of the investigation by the inspector general, which will be designated 1-B.

(The record referred to was thereupon received in evidence and marked Petitioner's Exhibit 1-B.)

Mr. Karesh: I think it is stipulated, is it not, Mr. Davis, that there are certain affidavits in 1-B, and that these affidavits may be considered as though they had been taken at this time for purposes of this habeas corpus hearing, is that correct?

Mr. Davis: That is true, your Honor.

Mr. Karesh: Is that agreeable, your Honor? [5]

The Court: Very well.

Mr. Davis: So stipulated.

If the Court please, at this time I wish to offer an affidavit of one Ralph S. Johnston, in connection with this matter, and ask permission to read it into the record.

Mr. Karesh: Ordinarily, your Honor, we might object to an affidavit being offered in evidence because it does not give us an opportunity to cross-examine, but we believe that will be adequately taken care of by the affidavits in Petitioner's Exhibit 1-B, so we will not object to the affidavit of Major Johnston, which under the new rules is within the discretion of the court to receive.

Mr. Davis: Yes, your Honor, under the new rules

it is within the discretion of the court to accept an affidavit. I might point out, of course, we can't produce this Ralph S. Johnston. On the other hand, I also point out he is still a member of the Army, and if they wish to confront him, they can produce him.

The Court: It will be admitted and marked.

(The affidavit referred to was thereupon received in evidence and marked Petitioner's Exhibit 2.)

Mr. Davis: May I read it into the record?

"State of New Jersey,
County of Monmouth—ss.

"Ralph S. Johnston, being duly sworn, deposes and [6] says: I am a Major, Officers' Reserve Corps, Army of the United States; that I was defense counsel for Colonel Edward J. Murray, Inf., AUS, during his trial 14 April-29 May, 1947, by court martial convened at Yokohama, Japan.

"At about 10:15 on the morning of 17 April, 1947, after the court had denied several of my motions for acquittal of Colonel Murray under certain charges and specifications, the court took a short recess. The members of the court upon this occasion retired to the anteroom reserved for their use in the courthouse. Before entering this room, the president of the court, Major General Chase, asked Captain Bachison to step into the room with the members of the court. Although I was not invited

to go into the room along with Captain Bachison, I did enter it immediately without invitation.

“As soon as we had entered this anteroom, Gen. Chase addressed Capt. Bachison and asked him, ‘Have you done everything you can do?’ Capt. Bachison answered in the affirmative. Gen. Chase then said, ‘This will never do.’ Gen. Chase then picked up the telephone in the anteroom and became connected with the Office of the Civil Property Custodian. He then asked to speak with Brigadier General Patrick H. Tansey, who was the Civil Property Custodian. When he was connected with Gen. Tansey, Gen. Chase said, as nearly as I can remember the exact [7] words, as follows: ‘Tansey, this is Chase, down in Yokohama. The prosecution has just rested. Is there anything that your office can do to gather more evidence to help us get a conviction?’ After a considerable pause, General Chase then said into the telephone, ‘Is that so. Do you think you can? Can you get those people down here right away?’ After another short pause, Gen. Chase then said, ‘All right. Then we’ll recess until they can get here.’ That closed this conversation.

“The following day, 18 April, 1947, upon motion of the prosecution a continuance was granted until 12 May, 1947; that during said continuance deponent made every effort to find in Japan an impartial diamond expert to assist in the cross-examination of the government’s witnesses, whom he was advised would attempt to identify some Murray diamonds as having been purchased by Koeki-Eidan,

and to testify for the defense; that he finally located such an expert in Shanghai; that upon the reconvening of the court on 12 May, 1947, he made a motion for a continuance of two weeks in order to procure the attendance of this necessary witness but this motion was denied, and defense was compelled to proceed without the assistance of this necessary witness; that during the extended recess of the court 18 April-12 May and several days before its reconvening 12 May, the exact date being unknown to me but I [8] believe Thursday, 8 May, 1947, while I was entertaining several guests at my home, House 504A, Yokohama, between 8:30 and 9:00 o'clock in the evening, Captain Andrew H. Bachison, Trial Judge Advocate in the case of Col. Edward J. Murray, called at my home to pick up a volume of the U. S. Code Annotated, which was used by both of us in the trial. Upon this occasion, I invited Capt. Bachison to stay a while with us as he had previously met several of my guests. Capt. Bachison did remain under these circumstances about an hour. During the course of our conversation, he and I talked about his work in attempting to trace the diamonds comprising Exhibit 1 in the trial record from Koeki-Eidan to the custody of the United States Government. Capt. Bachison told me of the progress he had made in interviewing Japanese diamond dealers and representatives of Koeki-Eidan by stating either in these words or in words closely similar that, 'I have finally got these men to say what I want them to

say.' Then he added, 'I have certainly had to sweat them out,' and 'even at that, I am not so sure about their standing up when they actually appear as witnesses.' I gathered from these statements of Capt. Bachison that he had subjected these prospective witnesses to great pressure and influence amounting to duress to force them to identify certain of the diamonds which comprise Exhibit 1. [9]

"The quoted conversation of Capt. Bachison was had before all persons in the living room in my home at that time. These people included Mr. F. C. Taylor, general manager, American Trading Company, 51 Canton Road, Shanghai, China, who was at that time serving with SCAP in Japan as civilian textile adviser; Capt. Charles Thompson, MAC, AUS, assistant port surgeon, Second Major Port, APO 503, and Capt. Thompson's wife, Mrs. Beverly Thompson; Mr. Edward E. Flaherty, assistant vice consul of the United States at Yokohama, and Mr. Flaherty's wife, Mrs. Joan Flaherty; and First Lieutenant Robert Jackson Crook, FA, AUS, 8th Army Officers Club, Special Service Section, 8th Army, APO 343.

/s/ "RALPH S. JOHNSTON."

And sworn to by a notary public of the State of New Jersey.

Mr. Davis: If the Court please, this is an affidavit which I believe is already in the record before the Inspector General. In other words, this Japanese, Matsui, gave an affidavit at some date prior to this, which is in the record. Then he gave

certain testimony to the inspector general of the Army. But he has now given a current affidavit, on the 18th of November, 1947, before the United States Vice Consul for Tokyo, Japan.

Mr. Karesh: That would clutter the record, your Honor, as I understand it. It is in this Exhibit 1-B. We do not [10] need to put it in again.

The Court: The subject-matter you are dealing with there is in the record?

Mr. Davis: It is in the record already. This is just a reiteration of it, your Honor.

Mr. Karesh: We will object to its offer.

The Court: The objection will be sustained.

Mr. Davis: I believe the same would apply to an affidavit. However, I will offer it. It is the affidavit of Mr. F. C. Taylor, which was taken on the 18th of March, 1949, before the Vice Consul in Yokohama, Japan. This affidavit is also in the record.

Mr. Karesh: We will object, your Honor, that it merely clutters up our proceedings here. It is already in Exhibit 1-B, Mr. Davis informs me. There is no use of putting it in here.

The Court: The same ruling. The objection will be sustained.

Mr. Davis: If the Court please, at this time I wish to offer in evidence the affidavit with the attached documents of Ralph S. Johnston again. This is taken before a notary public in the State of New Jersey, County of Monmouth. I respectfully call your Honor's attention to the portion of Major

Johnston's affidavit which refers to the actions of Captain Bachison in stating that he had sweated out the witnesses.

Mr. Karesh: I will object to this, if it please the Court, for the reason that no proper foundation has been [11] offered for the admission of the attached affidavits. Clearly, Mr. Johnston does not know anything about them. He says, "These interrogations were held at the offices of the Civil Property Custodian, and the copies attached hereto were handed to me at my request by the Office of the Civil Property Custodian."

The Court: That is a portion of the affidavit, if I followed your language.

Mr. Karesh: They are only a part. They are not complete. For that additional reason we voice an objection. Of course, no proper foundation has been offered for their admission. There is no showing that these affidavits were actually on file with the Office of Civil Property Custodian, and I think this record before the inspector general will suffice. We will voice a vigorous objection to these affidavits.

Mr. Davis: In the first place, Mr. Karesh, they are not affidavits.

Mr. Karesh: Well, statements. They purport to be a part of the record of the interrogation of Bachison and these witnesses.

Mr. Davis: Now, Mr. Karesh's objection, as I see it, your Honor, merely goes to the weight of the testimony, not to its admissibility. Mr. Ralph

Johnston says these are copies of interrogations made before the Civil Property Custodian, and they were given to me by Major Priman. That merely goes [12] to the weight. He does not say they are true or not true. He merely says these are parts of the record handed to me by Priman.

Mr. Karesh: Your Honor, they are not under oath.

Mr. Davis: They do not purport to be. They purport to be a transcript of testimony which was taken at a hearing.

Mr. Karesh: We do not know whether that was actually taken, or not, and we offer the objection, your Honor. Here is something that allegedly took place before the Civil Property Custodian, and we say it is clearly immaterial and objectionable, and no foundation has been laid for its introduction.

The Court: Submitted?

Mr. Davis: Yes.

The Court: The objection will be sustained.

Mr. Davis: If the Court please, I will ask permission to call the petitioner.

EDWARD JACKSON MURRAY

called as a witness in his own behalf; sworn.

The Clerk: Will you state your name?

A. Edward Jackson Murray.

Direct Examination

By Mr. Davis:

Q. Mr. Murray, what is your age, please?

A. I am 57. [13]

(Testimony of Edward Jackson Murray.)

Q. Prior to this court martial that we are considering here today you were an officer in the United States Army, is that correct?

A. Yes, that is right.

Q. What was your rank?

A. Colonel, Colonel of Infantry.

Q. Will you tell the Court briefly what your military history has been? I mean what branch of the service have you been in?

A. I have always been in the infantry. I enlisted in the California National Guard in 1914. My service has been practically continuous in the National Guard. However, all of it has not been active duty in Federal Service. I served on the Mexican border in 1916, Federal Service; also in the First World War, in the United States, in England, and in France. After the First World War my service, of course, inactive, in the California National Guard until the Second World War, or, rather, March 1, 1941, when the National Guard was called into Federal Service, supposedly for one year's training. At that time I was a Colonel in command of an infantry regiment. Then I served as a regimental commander from that date until February, 1945. At that time we were in the Philippines, and I was appointed military government officer for the 40th Division on that date. We moved down into the Southern Philippines and we landed on the Island of Panay, and after taking that island the division reinforced moved over

(Testimony of Edward Jackson Murray.)

to Negroes, and I was left in command [14] of the Island of Panay, from which point I had to supply the reinforced division. I had to maintain order. I had the duty of appointing some 300 supply officers, ranking from three provisional governors down to baria mares. I also had a battalion of construction engineers there with which I built two air strips, reconstructed 125 kilometers of railroad; I had a battalion of infantry with which we kept what Japs were left on the island—about 200 it turned out after the surrender—we kept them back in the hills.

Q. In other words, Colonel, when you were in active duty, both in the First World War and in the Second World War, and on the Mexican border, you were a combat officer, is that correct, and you were not an administrative officer?

A. Yes, that is true. I was an infantry officer all the time. I had some administrative work, yes, but my main mission was not that. [15]

Q. In the period of time between the First World War and the Second World War you were in inactive status. What was your position?

A. I was an engineer. Most of that time I spent in the employ of the State of California, first with the Reclamation Board, and then with the California Highway Commission. I was in the Bridge Department.

Q. What was your educational background?

A. My educational background was only high school, as far as actual schooling is concerned.

(Testimony of Edward Jackson Murray.)

I left high school and went to work when I was 18 in a bank. While in the bank I studied mathematics and engineering at night and I left the bank to go work as an engineer. I took a course from the International Correspondence Schools in civil engineering. I spent five years studying that. Later I took a University Extension course by the University of Wisconsin. I also took a special course in structural design in Sacramento at a special school that was running there.

Q. Tell me, after you were transferred to Japan from the Philippine Islands, you were placed in charge, you were placed in a position in charge of the bank vaults of the Bank of Japan; is that true?

A. In charge of four vaults which the 8th Army had taken over, in the Bank of Japan, yes.

Q. Do you know of your own knowledge which division or branch [16] of the Army had been in charge of these vaults immediately prior to the time that you took them over?

A. Well, immediately prior to the time I took over from Colonel Shoemaker who was in charge there, either three or four days after he had taken over from some representative of the First Cavalry Division.

Q. Do you know approximately how long the First Cavalry Division had charge or custody of these vaults?

A. I do not know exactly. I heard that from

(Testimony of Edward Jackson Murray.)

the—well, up to the time we took over, which was in November of 1945—I couldn't tell you exactly.

Q. In any event, they were in charge up until the third or fourth day before Colonel Shoemaker took over and then you took over from him?

A. Correct.

Q. Do you know of your own knowledge the name of the commanding officer of the First Cavalry Division at that time?

A. Yes; Major General William Chase.

Q. Was it the same General Chase who was president of your court martial?

A. The same man.

Q. At the time when the court martial was appointed, did you know at that time, or did it recall itself to your mind that the General Chase who was sitting as president of your court martial was the same General Chase who had had custody of the [17] vaults prior to that time?

A. Well, I knew it, of course, in the back of my mind, but it made no impression on me. I didn't connect the two parties.

Q. Will you tell us briefly what was the general condition there in the bank as far as the condition of the property that you had in these vaults?

A. You mean when I first went there?

Q. Yes; when you took over.

A. Well, the condition of the property in the vaults was rather—well, it was, I would say, chaotic. The impression I got on going in there and

(Testimony of Edward Jackson Murray.)

looking at it was, they backed trucks up to the door of each vault and just shoveled stuff out into it.

Q. What type of property was in there?

A. It was all——

Mr. Karesh: I object to the question on the ground that this line of testimony is immaterial; whether there was or was not evidence before the court is not cognizable in habeas corpus.

Mr. Davis: I am not introducing it for that purpose, at all. I am introducing it for the purpose of showing and in support of my allegations in my petition just briefly what the condition was there, what he was doing.

The Court: For that limited purpose I will allow it.

Q. (By Mr. Davis): Would you say that there were valuables of all types in there, for example, jewelry, all types of [18] valuables, but they were not segregated or in separate compartments, or anything like that; they were just there, as you say, in a chaotic condition?

A. Well, some were—in those vaults was a tremendous number of gold and silver ingots. Those items were pretty well taken care of. They were large, heavy things, and they were in pretty good shape, but other stuff that had been brought in there in the shape of all kinds of commercial and industrial precious metals; the electrical industry, for example, there would be a tremendous lot of silver and platinum wire. There was all kinds of

(Testimony of Edward Jackson Murray.)

that sort of stuff. Then there were a tremendous number of rayon spinnerettes, thousands and thousands of them. They are about 50 per cent gold and 50 per cent platinum. There were all kinds of—there was probably a ton of platinum in various shapes, castings and so on.

The Court: What is a rayon spinnerette?

A. They use that in their spinning, when they make rayon; they take cellulose and put it in a vat with chemicals and turn it into rayon. Then they run it through the spinnerettes, they have very fine holes; it dries as it comes out, they put it on their spinnerettes and dry it out.

The Court: Proceed.

A. That condition, that is what we found in the bank there. It was simply a fact that the stuff was coming in there too fast for them to take proper care of. I can't say anyone is to [19] blame for that condition. At that time it could not have been anything else; I don't see how it could. Our job when we went in there was to straighten it out and make an inventory.

Q. (By Mr. Davis): After these charges were made against you do you recall an occasion when you were interrogated by a Colonel Hood, the inspector general of the 8th Army?

A. Yes.

Q. Do you recall where that interrogation took place?

A. That took place at the 8th Army stockade in Tokyo.

(Testimony of Edward Jackson Murray.)

Q. Who, if anyone else, was present at the time of that interrogation?

A. There was Captain Currier, of the Judge Advocate General's Department, and Colonel Hood; Colonel Hood had brought him as his attorney; Lieutenant Colonel Gorman, of the Judge Advocate General's Department of the 8th Army also.

Q. What period of time did that interrogation take?

A. It started at approximately one o'clock in the afternoon and ended about six that evening.

Mr. Karesh: Lay the foundation of time.

Q. (By Mr. Davis): Do you recall what day this was?

A. No, I don't. It was in February of 1947, after I had been confined in the 8th Army stockade.

Q. At the hearing——

The Court: What date were you confined?

A. 18th of February. [20]

The Court: What date did this hearing take place?

A. I don't know the exact date.

The Court: Approximately?

A. It was about a week later, it seems to me.

Q. (By Mr. Davis): About a week later. Where did you say it was, in the stockade?

A. In the stockade.

Q. These men whom you have mentioned were present and yourself? A. Yes.

(Testimony of Edward Jackson Murray.)

Q. At the outset of this interrogation did you make any statement to Colonel Hood to the effect that you wished to be represented by an attorney?

A. Yes.

Q. What, if anything, did he say to you?

A. He told me in that kind of inquiry I was not entitled to counsel.

Q. After he made that statement, did you then proceed to answer certain questions which he put to you?

A. I did.

Q. Going now to the actual court martial, do you recall the episode in the court martial when your counsel requested a continuance for the purpose of securing a commercial diamond expert to assist in the cross-examination of the prosecution witnesses?

A. Yes, I do. [21]

Mr. Karesh: The record speaks for itself. I don't think counsel should impeach it.

Mr. Davis: I am not attempting to impeach it. I am merely attempting to support it.

Q. You do recall your counsel asking for a continuance, do you not?

A. Yes.

Q. Was it granted?

A. It was not.

Q. Finally, Colonel, did you upon one occasion here when you were examined by Customs Agents have four diamonds in your watch pocket; is that correct?

A. Yes.

Q. Were those part of the original diamonds which you had brought here on a previous occasion?

Mr. Karesh: Will you fix the time?

Q. (By Mr. Davis): Do you recall when this took place, what day it was?

(Testimony of Edward Jackson Murray.)

A. On the 3rd day of February, 1947.

Q. Where did it take place?

A. Here in San Francisco.

Q. Down on the dock, or where, the Customs House?

A. The interrogation?

Q. Yes.

A. The interrogation was at the Customs House, yes. [22]

Q. Who was present other than yourself?

A. Oh, there were several customs agents there; Mr. Smith was conducting the investigation. There was also a CID agent from the Army there by the name of Graff.

Q. At the time you turned over to them four diamonds which you had in your pocket; is that correct?

A. I turned the diamonds over to them aboard the ship before we went up to the Customs House.

Q. Were those part of the same diamonds which you had originally brought in?

A. They were, yes.

Q. And you had brought four of them back to Japan?

A. That's right.

Q. You had brought them back to this country again?

A. Yes.

Mr. Davis: I believe that is all.

The Court: We will take a recess now.

(Recess.)

Cross-Examination

(By Mr. Karesh):

Q. Colonel Murray, during the course of the

(Testimony of Edward Jackson Murray.)

direct examination by your counsel, Mr. Davis, you mentioned certain diamonds that the customs officials had taken. Were those diamonds that you brought back from Japan?

A. The ones he referred to were, yes.

Q. Had you declared them with the customs?

A. I had them with me when I came here in 1946. When I left to go back to Japan I still had those four diamonds in my pocket. I took them back with me and I brought them back in 1947, and I gave them to them aboard ship; they did not take them away from me.

Q. How did they happen to take them away from you?

A. They did not take them away from me.

Mr. Davis: I object to that question.

Q. (By Mr. Karesh): Well, explain how they happened to find these diamonds.

A. They did not find them. I will explain to you——

Q. Will you explain the circumstances, yes, how you gave them to them.

A. Yes. They said they had information that I had smuggled diamonds into the United States. That was when I walked down the gangplank of the ship; I was met at the gangplank, Mr. Smith and the CID official, Mr. Graff—this was on the 3rd day of February, 1947. Customs Agent Smith told me that he was going to search men, and asked

(Testimony of Edward Jackson Murray.)

me if I agreed to be searched. I said yes. So we went back aboard ship, went into the cabin that I had occupied, and I took everything out of my pockets. I gave them to them and gave them these four diamonds that I had in my pocket in addition to the other things I had.

Q. Where was Mr. Smith at the time that he first accosted you? [24]

A. He was at the foot of the gangplank.

Q. When you came down the gangplank you had this conversation with him, and he took you back, and you agreed to let him search you, and he found the diamonds; is that right?

A. I gave him the diamonds.

Mr. Davis: I object to the form of the question.

The Witness: I gave them to him.

Q. (By Mr. Karesh): You did not give them to him when you came down the gangplank?

A. No.

Q. You were tried before the court martial, am I correct, for allegedly smuggling in these diamonds that you say you gave to the customs officials?

A. Yes.

Q. You were also tried in addition to the smuggling charge for having other diamonds; that's right, isn't it? A. Yes.

Mr. Karesh: That is all.

Mr. Davis: That is the petitioner's case at this time, your Honor. As I say, the points raised by the petition will necessitate a studious examination

of the record in an attempt to point out to your Honor the various portions of the record which substantiate the allegations of the petition. I would suggest that we have sufficient time to brief that. What do you think, Mr. Karesh? [25]

Mr. Karesh: Well, I want to put on some witnesses.

Mr. Davis: I am merely closing my case at this point, and would like to make arrangements for putting in the brief on the other points.

Mr. Karesh: Sure; that is fine. We will put one in, ourselves, in reply, if your Honor will permit it. First, we would like to put on our witnesses.

The Court: Proceed.

Mr. Karesh: You have rested, with the exception of the brief?

Mr. Davis: With the exception of the brief and calling his Honor's attention to the specific portions of the record that we rely upon, and, of course, the argument.

WILLIAM C. CHASE

called as a witness on behalf of the respondent; sworn.

The Clerk: Will you please state your name?

A. Major General William C. Chase, United States Army.

Direct Examination

Mr. Karesh: Before I interrogate the witness I may say that he was interrogated by the inspector general and his testimony in answer to this con-

(Testimony of William C. Chase.)

tention by Major Johnston, an affidavit by General Chase was put in the record. With your Honor's permission we would like to ask a few questions as to his background. [26]

The Court: Proceed.

Q. (By Mr. Karesh): General, you are a member of the regular Army of the United States?

A. I am.

Q. Are you a graduate of West Point?

A. I am not. I graduated from Brown University, Providence, Rhode Island.

Q. When did you graduate? A. 1916.

Q. When did you first go into the armed forces?

A. I went into the armed forces first as a private in the Rhode Island National Guard in 1913.

Q. Thereafter did you enter the Regular Army?

A. Went into the Regular Army in 1916, just prior to the First World War.

Q. Did you apply for a commission as a result of your prior service in the National Guard?

A. Correct.

Q. What rank were you given?

A. I was a second lieutenant in the Regular Army, November, 1916.

Q. Did you serve in the First World War?

A. I served through the entire World War with the 4th infantry division.

Q. What rank did you have during the First World War? [27] A. I was a captain.

(Testimony of William C. Chase.)

Q. Have you served continuously in the United States Army since your original entry?

A. Indeed, I have.

Q. At the present time you are a major general; is that right? A. Correct.

Q. Is that a temporary rank, or is that a permanent rank?

A. That is a permanent rank of major general.

Q. Did you serve during World War II?

A. I did.

Q. Before I go into your service in World War II, where are you stationed now?

A. I am on duty in the headquarters of the Third Army at Ft. McPherson, which is in Atlanta, Georgia.

Q. How long have you been stationed there?

A. I just arrived there. I hadn't been there 48 hours when I was ordered back here. I just returned from Tokyo to Atlanta.

Q. You mean you were ordered back here for the purpose of this trial, and then you will go back?

A. Yes.

Q. Are you chief of staff?

A. No, I am not now, but I will be when the present incumbent is transferred to Europe.

Q. Will you then be chief of staff of the Third Army with headquarters at Atlanta? [28]

A. That is correct.

Q. Did you serve all through World War II?

A. Yes.

(Testimony of William C. Chase.)

Q. In what capacity?

A. I served as regimental commander, commanding 113th Cavalry Regiment.

Q. What do you mean by regimental commander?

A. A colonel commanding a regiment. I was promoted to brigadier general, First Cavalry Division, in which I served in Australia, New Guinea, the Admiralties and on Luzon. I was promoted to major general and assigned to command the 38th Infantry division, which I commanded for six months on Luzon. Then I was sent back to the 1st Cavalry Division, and commanded the 1st Cavalry Division from the 1st of August, 1945, continuously until the 12th of February this year, when I was transferred back to the States.

Q. During the war you were in much combat?

A. Yes, I was all the time.

Q. Did you participate in the Philippine reconquest?

A. Yes, I did.

Q. In what capacity?

A. I commanded the 1st Cavalry Brigade, a subordinate unit of the Cavalry Division, in the assault landing on Leyte; through the campaign on Leyte. Then we went up to Luzon, and I commanded units of that brigade. [29]

Q. You are wearing a combat badge?

A. Yes.

Q. And the decoration on the left is——

Mr. Davis: If the Court please, I have not ob-

(Testimony of William C. Chase.)

jected as yet, but I think we are getting far afield. I don't think we are interested in the record of either one of these men.

The Court: Well, you developed the record of your client.

Mr. Davis: I did not develop anything about decorations, your Honor, which I could have done if I wished. I don't think it is pertinent.

Mr. Karesh: You said Colonel Murray was a combat man. We will show this gentleman was also a combat man, and that usually combat men have a feeling for each other.

The Court: Proceed.

Q. (By Mr. Karesh): What is that decoration on the left?

A. This is what is known as Distinguished Unit Citation.

Q: That is given to the unit?

A. Yes, by the War Department, for exceptional bravery in action.

Q. You have the Distinguished Service Cross?

A. Yes.

Q. And you have other decorations?

A. Yes.

Q. Did you participate in the trial as a member of the general court martial which convicted Colonel Murray?

A. Yes; I was president. [30]

Q. President of the court? A. Yes.

Q. What is the duty of the president of the court?

(Testimony of William C. Chase.)

A. He is the senior officer of the court, conducts the court.

Q. You do not make the rulings on law, however?

Mr. Davis: If your Honor please, I object to this line of testimony. The general's opinion as to his duties as president of the court martial are certainly incompetent, irrelevant and immaterial in this proceeding. It is a matter of law, what his duties are.

Mr. Karesh: Well, I merely wanted to show your Honor the background of the court martial. However, we will withdraw the question.

The Court: While I was sitting here silently it occurred to me, as perhaps it has to you, I don't know what some of us have done here at home when I see such men as these. With that thought, we will proceed.

Mr. Karesh: Will you have any objections if I ask him the duties of the court?

Mr. Davis: I think it is incompetent, irrelevant and immaterial.

The Court: I will allow it.

Q. (By Mr. Karesh): What are the duties of the president of the court martial, distinguished from the law member?

A. The law member, your Honor, renders decisions on points of [31] law. The president presides and opens and closes the court, and conducts the discussions in closed sessions. The man who renders the decisions on law is the law member,

(Testimony of William C. Chase.)

who, in this case, was Brigadier General Edward Brown.

Q. Do you remember how many members of the court there were which tried and convicted Colonel Murray?

A. Indeed; there were nine. The prosecution challenged General Smith peremptorily and he was dismissed. That left eight.

Q. There were eight men who passed judgment upon Colonel Murray? A. That is correct.

Q. What was the rank of the least ranking officer who sat on the court martial?

A. He was a full colonel who was senior to the accused, had more service than the accused. All the members of the court held more service and were senior in rank to the accused.

Q. In other words, a major at that time could not participate in the trial of a colonel?

A. That is correct.

Q. You say there was a colonel who was senior to Colonel Murray?

A. That is correct; Colonel Easterday, who was the junior member of the court, and was senior to Colonel Murray.

Q. At the time you became a member of the court you took an oath under the Articles of War?

A. Correct.

Q. I think that was taken under Article IX. I will ask you [32] whether this is not the oath which you took at the trial of Colonel Murray——

(Testimony of William C. Chase.)

Mr. Davis: I don't think it is competent on cross-examination, your Honor.

The Court: I took an oath, myself, but it has nothing to do with it.

Mr. Karesh: There has been a challenge to the integrity of General Chase. I think it proper to show the oath he took.

The Court: Proceed.

Mr. Karesh: This is the oath you took, General Chase:

"I do swear that I will well and truly try and determine, according to the evidence, the matter now before me, between the United States of America and the person to be tried, and that I will duly administer justice, without partiality, favor or affection, according to the provisions of the Rules and Articles for the government of the Armies of the United States, and if any doubt should arise, not explained by said articles, then according to my conscience, the best of my understanding, and the custom of war in like cases; and I do further swear that I will not divulge the findings or sentence of the court until they shall be published by the proper authority or duly announced by the court, except to the trial judge advocate and assistant trial judge advocate; neither will I disclose or discover the vote or opinion of any particular member [33] of the court martial upon a challenge or upon the findings or sentence, unless required to give evidence thereof as a witness by a court of justice in due course of law; so help me God!"

(Testimony of William C. Chase.)

You took that oath?

A. That is the oath I took, and all members of the court.

Q. In other words, the IXth Article, the oath that you took, General Chase, which says that you are not permitted to disclose the vote of the court unless a court of justice requires it in due course of law; that is right?

A. That is correct.

Q. This being a court of law, I will ask you that question: Will you divulge to the court the vote of the members of the court?

Mr. Davis: I object, your Honor. The vote of the court martial is obviously incompetent, irrelevant, and immaterial on a habeas corpus proceeding. I cannot see that it would have any merit other than an attempt to influence this court in ruling upon the petition. We don't care whether they voted unanimously, or not.

Mr. Karesh: It seems to me the petitioner is attacking General Chase. He says he was partial and he was unfair, he was biased. Assume for the sake of argument only, since we do not believe that the evidence would justify that conclusion, but assume he was biased, then the vote of the court martial would [34] become pertinent, or might become pertinent. Was it a unanimous vote?

Mr. Davis: I don't think it would.

Q. (By Mr. Karesh): Or was it a two-thirds vote? There must be a two-thirds vote?

A. Correct.

(Testimony of William C. Chase.)

Mr. Davis: I don't think it would.

The Court: Read the question.

(The question was read by the reporter.)

Mr. Karesh: The oath requires the general to keep it in confidence unless required to give answer thereof as a witness in a court of justice in due course of law. It requires a two-thirds vote of the court martial to secure a conviction. If there were an unanimous court then it would become material as to whether or not General Chase was prejudiced.

Mr. Davis: I object to it.

The Court: Overruled. He may answer if he wishes.

Mr. Karesh: Your Honor said, "if he wishes." There must be a direction to the witness; otherwise, under his oath he can't divulge the vote.

The Court: I have never met a problem quite like this; I am not going to compel the witness to answer, but if it will serve the ends of justice here which we are striving for he may answer.

Mr. Karesh: Your Honor, the general cannot answer that [35] question under this oath unless directed; so unless your Honor directs it we will withdraw the question; he can't. Well, I will ask him if he wishes to answer.

The Witness: I would not answer, sir, unless I am required by this court.

The Court: We will meet that situation. I will direct you to answer it now.

The Witness: Your Honor, the accused was found guilty unanimously by the court.

(Testimony of William C. Chase.)

Q. (By Mr. Karesh): General Chase, at the time of the trial of Colonel Murray, did you have any prejudice against him?

A. I had no prejudice against the man whatsoever.

Q. Any bias against him?

A. No bias. I had never seen him before he appeared in court.

Q. Did you have any bias against him at any time?

A. I have no bias against him at any time.

Q. Did you enter that court with the idea of securing a conviction against Colonel Murray, or did you enter the court with the idea that you would do justice as you saw it?

A. I went into the court with the firm resolution to give this man a fair trial and to do justice as the evidence was produced in the court martial.

Mr. Karesh: Your Honor, all the rest of the allegations about securing a conviction are met in the affidavit of General Chase in the inspector general's report. These are answered so [36] we don't think we need to pursue it any further.

Mr. Davis: If I understand you correctly, Mr. Karesh, the general is not at this time denying any of these allegations; he is merely resting upon what he said at some previous time?

Q. (By Mr. Karesh): General Chase, you heard read an affidavit into the record made by Major Johnston? A. I did.

(Testimony of William C. Chase.)

Q. Major Johnston was one of the defense counsel? A. He was the defense counsel.

Q. Did he have any associates?

A. He had an associate, Lieutenant Colonel Tressler, I think.

Q. In this affidavit there is this statement made by General Johnston, I will read the statement:

“General Chase said, as nearly as I can remember the exact words, as follows: ‘Tansey, this is Chase, down in Yokohama. The prosecution has just rested. Is there anything that your office can do to gather more evidence to help us get a conviction.’ ”

Did you say “Is there anything your office can do to gather more evidence to help us get a conviction?”

A. I did not.

Q. There is also in this affidavit some conversation that you allegedly had with Captain Bachison—he was the trial judge advocate.

A. Correct.

Q. Captain Bachison, according to Major Johnston, said—and [37] this is the conversation that took place between yourself and Captain Bachison:

“General Chase addressed Captain Bachison and asked him, ‘Have you done everything you can do?’ Captain Bachison answered in the affirmative. General Chase then said, ‘This will never do.’ ”

Did that conversation take place?

A. The conversation took place, but I did not say, “This will never do.”

Mr. Karesh: That is all.

(Testimony of William C. Chase.)

Cross-Examination

By Mr. Davis:

Q. General Chase, you, as I understand it, had charge of the First Cavalry Division in Japan?

A. I was in command of it, yes.

Q. It is a fact, is it not, that prior to Colonel Murray taking over this position of custodian of the vaults in Japan, that the First Cavalry Division had charge of those vaults?

A. The First Cavalry Division guarded the vaults and still does.

Q. In addition to guarding them at the time Colonel Murray took over, and Colonel Shoemaker before him, it is a fact, is it not, that in addition to guarding them that your division, or the First Cavalry Division had charge of the actual control of those vaults as in the same position that Murray had later? [38]

A. My Second Cavalry Brigade in Tokyo along with all the troops in Japan at a given moment in October, 1945, seized the bank, seized various other banks, and we were in charge of everything in the vaults; my Second Brigade commanded by General Hoffman, until we turned it over to Colonel Murray; I think one week, maybe two weeks.

Q. For a certain time your division was responsible for the custody of everything that was in those vaults? . . . A. That is correct.

Q. Did that occur to you when you were asked or ordered to become the president of the court martial of Murray?

(Testimony of William C. Chase.)

A. No. It had nothing to do with that, whatsoever, and that fact was well known in Tokyo and well known to General Eichelberger and General MacArthur, and had nothing to do with my eligibility for appointment.

Q. You say General Eichelberger and General MacArthur made you the president of the court?

A. No; Eichelberger appointed the court.

Q. You say then that the fact that your own division, regiment, had, or somebody under your command had charge of these vaults prior to Colonel Murray, you still feel that that in no way prejudiced you from sitting as an impartial judge or president of this court?

A. It did not affect me one way or the other. I had never seen this man and knew nothing about him at all. [39]

Q. Without having seen him, did it ever occur to you that if at the court martial it had been proved that this man was innocent of having taken them it would have cast a reflection on the men under your command?

Mr. Karesh: I object to that as argumentative.

The Court: I will allow it.

The Witness: The question has never arisen. There has never been the slightest aspersion cast on any of our people in the First Cavalry Division with reference to our operations in the Bank of Japan.

Q. (By Mr. Davis): The question I asked you

(Testimony of William C. Chase.)

was, did it ever occur to you that if certain men under your command had charge of something and it was found that something was missing, and the man who was charged with having taken it was found innocent, wouldn't the implication be that it could have been or probably was someone who was under your command?

A. Not necessarily. The CIC was involved, the Criminal Investigation Corps was involved in moving these things, and all units in Japan were involved in transporting precious metals and jewels to the Bank of Japan, where my men for the first two or three weeks merely received them and stored them, and upon my urgent recommendation that there be an appraisal and inventory made to General Eichelberger, that was done, and this colonel, the first colonel, Shoemaker, I believe, came in who turned them over in a few days to Colonel Murray.

Q. It never occurred to you to disqualify yourself from sitting on the court martial?

A. No, it never did, and I would not consider that it is material at all, or that it was considered by General Eichelberger, the Army Commander—he very carefully considered the personnel of this court.

Mr. Davis: I ask that go out. He does not know what General Eichelberger considered.

The Court: The question and answer will stand.

Q. (By Mr. Davis): Coming now to the court martial, itself, it is a fact, is it not, that you did

(Testimony of William C. Chase.)

telephone General Tansey and ask him to secure more evidence?

A. It is a fact that I called up General Tansey, but all the rest of these things in here, it is all wrong, as far as that is concerned.

Q. Will you tell us what did you ask General Tansey?

A. I called up—I did not call General Tansey, as a matter of fact, I had the judge advocate call General Tansey in a room, in an open room which was an ante-room of the court, there was a table and telephone there, and where this young judge advocate, your Honor, had told me that he was having difficulty getting cooperation from the office in Tokyo known as the Civil Property Custodian's office, of which this General Tansey was commander. They have control over all these diamonds and all this merchandise that was in the Bank [41] of Japan. He told me that he was not receiving wholehearted co-operation from certain of the underlings in this office, so I decided to talk about this matter with General Tansey, and I called him, or had Bachison call him, and then I talked to him in this open room where there were several people, and where the defense counsel was, where the judge advocate was, and had a conversation with him, telling him that we were not getting as much co-operation from him as we would like to secure, and how about that, that he was to correct it. At that time I did say that we wanted

(Testimony of William C. Chase.)

more evidence in order to get a conviction. That is well borne out in this affidavit.

Q. Do you recall now what you did say to General Tansey?

A. That would be very difficult. It is two years ago. I know that I did not say this because of the fact that several witnesses who were in the room have testified under oath, and I do not remember saying it, myself.

Mr. Davis: I will ask that go out as to what several witnesses testified.

Q. In other words, that is the only way you remember it, is because somebody else says you did not say it; is that it?

A. I have only a general recollection. There was not anything—as a matter of fact, the conversation was a long conversation, a business conversation in which I told him that his colonel who was his executive was giving my Captain Bachison the brush-off and that I wanted it corrected, words to that [42] effect, and that is just about what happened.

Q. In other words, you deny now that you said anything to him about getting more evidence or that you wanted somebody to come up and identify the diamonds?

A. I deny that I told him we needed more evidence in order to get a conviction.

Q. Do you deny that specific language?

A. That is correct.

(Testimony of William C. Chase.)

Mr. Karesh: Would you have any objection if he looks at his affidavit, Mr. Davis?

Mr. Davis: We will look at it later. I am asking right now, Do you deny all of the language in that statement by Johnston that Chase called to get more evidence to get a conviction, or do you deny a portion of it?

A. Let me see the statement.

Q. I am referring now to the specific portion here, where he allegedly states—starting on page 1, line 30, and continuing over to half of line 1 on page 2 (handing document to witness).

A. I deny only the words “to gather more evidence to help us get a conviction.”

Q. Did you use the language “to gather more evidence”?

A. I may have and I may not have, and if—I may well have. As a matter of fact, it is my duty as president——

Q. Just a minute. I am not interested in your opinion of your [43] duties.

The Witness: Let me have the court martial manual.

The Court: Let him complete it.

The Witness: It is my duty as president of the court, under paragraph 75 in this Court Martial Manual, page 58, paragraph 75, as follows:

“The court is not obliged to content itself with the evidence adduced by the parties. When such evidence appears to be insufficient for a proper

(Testimony of William C. Chase.)

determination of any issue or matter before it, the court may and ordinary should take appropriate action with a view to obtaining such available additional evidence as is necessary or advisable for such determination. The court may, for instance, require the trial judge advocate to recall a witness, to summon new witnesses, or to make investigation or inquiry along certain lines with a view of discovering and producing additional evidence."

This telephone conversation of mine and General Tansey was in order to implement the duties of mine as president of the court.

Q. (By Mr. Karesh): What Article of War was that?

A. It is not an article. This is from paragraph 75 of Chapter 14 of a volume entitled, "A manual for Courts Martial, U. S. Army, 1928."

Q. That was in effect at the time? [44]

A. That was in effect at the time of the trial. The action I took in calling General Tansey was entirely in accordance with that, your Honor.

Q. (By Mr. Davis): In other words, it was your purpose in calling Tansey to attempt to secure more evidence; is that correct?

A. In compliance with that thing right there.

Q. Of course, you know, General——

A. The court felt that the judge advocate, the prosecuting attorney, had not brought in enough evidence, had not traced the ownership of these diamonds in question, and we felt that General Tan-

(Testimony of William C. Chase.)

sey's office would have some information which we should have in order to reach a fair trial both for the accused and for ourselves, and after the trial judge advocate, Bachison, had complained to me then I called this General Tansey, Civil Property Custodian, and told him that we were having this trouble and that we needed some help, and that was the sum and substance of the whole thing, and he sent down people who conferred with the judge advocate, some of them testified, and some of them did not; but the action which I took as president of the court is thoroughly justified and very customary in courts martials.

Q. That is an opinion of what that rule means in the manual, your opinion of what that means in the Courts Martial Manual?

A. My opinion of what? [45]

Q. That is your opinion of what that language means in the Manual for Courts Martial, when you say it is thoroughly justified and often done, that is your opinion?

A. That is the custom.

Q. You feel that to be——

A. I know it is from thirty years' experience.

Q. At the time you called this recess and called Tansey, you did not believe the trial judge advocate had put in sufficient evidence to prove the identity of the diamonds?

A. The court felt that not enough evidence had been introduced in the——

(Testimony of William C. Chase.)

Mr. Davis: I object to the general prefacing or starting his answer by saying "It was felt." He cannot speak for the court.

Mr. Karesh: Yes, he can.

Mr. Davis: Not what a man might feel.

The Court: Read the question.

(Question read.)

The Witness: I did not feel, myself, that there had been enough, and I felt it was my duty under the Manual of Courts Martial to direct this action of bringing in more witnesses, and bringing in more, let us say, direct tracing of the ownership of the diamonds in question.

Q. (By Mr. Davis): You did not instruct the trial judge advocate to put on those witnesses? [46]

A. Yes, I did, and he told me, this young man told me he had had trouble with these higher-ups and that was why I personally talked to General Tansey to break an administrative block which I did.

Q. In other words, in this matter it was apparent to you as president of the court that the prosecution for some reason or other could not get sufficient evidence, and they called that to your attention, so you spoke to their commanding officer to make it possible for them to do so?

A. That was my duty under the Manual of Courts Martial. I would have done the same thing for the defense had they made any complaint to me about it.

(Testimony of William C. Chase.)

Mr. Davis: I will ask all the answer go out. I did not ask him his duty, and I did not ask him if he would do it one way or another.

Mr. Karesh: I will ask the answer stand.

The Court: I will allow the record to stand.

Q. (By Mr. Davis): You know Colonel Esterbrook, don't you?

A. Yes. He was a member of the court.

Q. If I told you that Colonel Esterbrook made the statement and that it was a true statement of what you did at that time——

Mr. Karesh: If there is a statement show it.

Mr. Davis: I am asking the witness—Well, I can find it here.

Mr. Karesh: If you want to find it—— [47]

The Court: Just a moment.

Mr. Karesh: I object to the form of the question.

Mr. Davis: It is proper cross-examination, your Honor.

The Court: The form of the question is objectionable.

Mr. Davis: Well, if the Court please, I will ask time. We will have to have a recess anyway, I presume, for noon, and I will find the specific questions.

The Court: Very well. We will take a recess until two o'clock.

(Thereupon a recess was taken until two o'clock p.m., this date.) [48]

Afternoon Session, March 28, 1949

WILLIAM C. CHASE

recalled.

Cross-Examination

(Resumed)

By Mr. Davis:

Q. General, if I understood your testimony correctly, you did have a telephone conversation with General Tansey during a recess of the court?

A. That is correct.

Q. According to you, you had that conversation with him because you felt that there was insufficient evidence as to the identity of diamonds before the court?

A. We felt that that point had not been covered, and we felt also that the ownership of these diamonds should be covered, and we also felt that they should be traced into the Bank of Japan. We felt that way not only on the Government's behalf, but on the accused's behalf.

Q. And you also felt, did you not, that General Tansey was not giving cooperation to the trial judge advocate?

A. That is not correct. We felt that some of his subordinate staff were not cooperating with the judge advocate to the fullest extent.

Q. Was there any other officer there in Tokyo who was not connected in any way with the court martial, who was not a member of the board to whom the trial judge advocate could have gone to get this cooperation from General Tansey or his staff? [49]

A. He very properly came to the court, because——

(Testimony of William C. Chase.)

Q. I did not ask you that. I asked you was there any other officer, for example, General Tansey's commanding officer, who was that?

A. General MacArthur.

Q. No other general under General MacArthur?

A. That is correct. He was Civil Property Custodian of General MacArthur.

Q. It is a fact that the trial judge advocate, if he felt he was not getting cooperation from any branch of the Army in preparing the case for the prosecution, could have gone to some officer or to the staff of General MacArthur, or to General MacArthur, himself, to make that fact known?

A. He could have spoken to the Judge Advocate's Department in the Eighth Army Headquarters, which, as a matter of fact, I believe he did.

Q. You felt that under the Manual of Courts Martial you were permitted as president of the Court, when the prosecution told you that they were not getting cooperation from some people who could give evidence, you felt that under your interpretation of that Manual that you were entitled to try to see that they got the co-operation?

A. I felt the court wanted the whole picture spread before it. We wanted all the facts in the case spread before the court and we did not feel at that time that such had been done. [50] That was the effort that we made to get a full exposition of all the pros and cons in the case laid before the court.

(Testimony of William C. Chase.)

Q. But in your conversation with General Tansy, as I understand it, you did ask him if he could get more, or if he had any evidence concerning the identity of these diamonds?

A. No. I told him we felt that we were not receiving full co-operation from his subordinate staff officers and that we wanted——

Q. Isn't it a fact you also asked him the specific question about the identity of the diamonds and whether or not he could produce any such evidence?

A. I may have. I may have; I am not sure; I do not remember that.

Q. Do you have any independent recollection of that telephone conversation now?

A. Yes; indeed, I have.

Q. You have a clear recollection?

A. Yes; I have a clear recollection of the subject matter; verbatim, I do not.

Q. You have had that recollection of it since that time; I mean continuously since that time; is that correct? I mean if you have a recollection of it now you knew it three months ago, six months ago, a year ago?

A. I have refreshed my memory from my affidavits which I put before the inspector general.

Q. May I see Exhibit 1-B, please? Did you say in your testimony [51] here today that your trial judge advocate telephoned him?

A. I told Captain Bachison to get General Tansy on the phone, and when he had General Tansy on the phone I talked to him, myself.

(Testimony of William C. Chase.)

Q. I wish to direct your attention to page 407 of the proceedings before the Board of Review. I will ask you to examine this entire page.

A. You wish me to read this; is that it?

The Court: Read it to yourself. He is going to examine you on it.

A. Yes; I am familiar with this.

Q. (By Mr. Davis): Read the question on page 469:

“Please state what conversations you had with General Tansey on this subject.”

A. Yes.

Q. Do you remember being asked that question?

A. Yes; I was asked it. That was taken down under oath and affirmed.

Q. Do you remember giving this answer to that question:

“A. I had had no conversations that I remember up until that time. Frankly, I found that the trial judge advocate had been given the brush-off by some of the underlings in General Tansey’s office, primarily his executive, so I personally called up General Tansey and told him what the situation was, and from there on in [52] apparently we were able to do business with them.”

This is a statement given six months after the trial.

A. That was given some five or six months later, that is correct.

Q. Was your recollection any better at that

(Testimony of William C. Chase.)

time than it is now, of what transpired?

A. I would say it is about the same. I have also this which is the only record that I have, but which is not taken under oath.

Q. In view of this statement, "I personally called up General Tansey," do you say to this court today that it was Captain Bachison who called him?

A. It was my custom always to have my aide or somebody make the connection and then I talked to the party with whom I had to do business, which I did in this case. I had other things to do, and I asked Bachison to make the connection, which he did, which is quite customary. The conversation with General Tansey was mine with him over the phone, about this case, after the connection was made, and which was a courtesy and quite customary in the military to do.

Q. Do you remember this question:

"Did you have more than one telephone conversation with General Tansey?"

A. Yes.

Q. Do you remember making this answer:

"I wouldn't remember, that was six months ago, and I [53] hold lots of telephone calls, I might have called him once, twice, three times, I wouldn't care to state."

A. That is quite correct. I remember having this one telephone conversation with General Tansey, which, I believe, is the only telephone con-

(Testimony of William C. Chase.)

versation that I had with him. There may have been others, because I talked to many people in the course of administering that division there in the City of Tokyo. I may well have had other conversations with General Tansey. I do know I had this one with him, which is the conversation in question.

Q. Do you recall being asked the question:

“Do you recall speaking to General Tansey over the telephone the day before this long recess I referred to previously was taken?”

A. Yes; that is the conversation to which we referred.

Q. Do you remember this answer:

“No; I can’t remember specifically when I called him or what time, or anything about it; that is six months ago.”

A. That is correct. That was my answer, and it is right there.

Q. You say now, General, that you have an independent recollection of this conversation, yet in the statement given six months later under oath you said, “No, I can’t remember specifically when I called him or what time, or anything about it; that is six months ago.” [54]

A. Yes. I said I did not remember what time I called him, or when it was.

Q. You said, “I don’t remember anything about it.” Now, you have an independent recollection of it?

A. That is correct, and after that, if you will

(Testimony of William C. Chase.)

read the next you will find that.

Q. I will read the next.

A. Read the next one or two; you will find I am talking of this specific conversation and I say I do remember this conversation.

Q. By the way, have you talked over your testimony in this case today with anyone?

A. I have conferred with the United States Attorney here, and with Colonel Voorhies, who is from the office of the judge advocate general of the Army, and I read this testimony which you are speaking with me now.

Q. Do you recall this question—

A. I also talked, of course, with General Tindall, who took this testimony here which you have in front of you.

Q. And your answer when you said, "I cannot remember specifically when I called him or anything about it; that is six months ago."

Do you remember this question: "I now show you an affidavit of Major Ralph S. Johnston, the defense counsel, dealing with that telephone call. Do you have any comments?" [55]

A. Yes, I recall that.

Q. Do you recall this answer:

"Well, I had a telephone conversation with General Tansey. What is the date of this?"

A. Yes.

Q. "The affidavit was made 9 October, 1947." Do you recall that?

A. Yes.

(Testimony of William C. Chase.)

Q. And this answer:

“Well, I had a telephone conversation with General Tansey, but I certainly do not remember that it ran like that. I don’t remember anything of this sort, at all. In fact, this is entirely foreign to any recollection of mine of any conversation that I carried on. In fact, I would even go so far as to say that was drummed up.”

Do you remember that? A. Yes.

Q. Do you remember this:

“Do you feel you did not use an expression such as ‘Is there anything your office can do to gather more evidence to help us get a conviction’?”

A. Yes.

Q. “A. I absolutely deny making that statement, I made no such statement, whatsoever.”

A. I denied it then and I deny it here again. [56]

Q. What I want to know is, do you deny making that statement and using that language and those exact words, because you actually now and at the time you made this statement have a recollection of it, or merely because you feel that all the evidence would have suggested something else, it is not the thing which would have been done?

A. I am stating to you I did not make the statement, because I know I never would have made any such statement.

Q. You say you did not make it because you know that you would not make such a statement?

A. I did not make the statement.

(Testimony of William C. Chase.)

Q. You say in your statement here:

“Well, I had a telephone conversation with General Tansey, but I certainly do not remember that it ran like that. I don’t remember anything of this sort, at all. In fact, this is entirely foreign to any recollection of mine of any conversation that I carried on.”

You say in one breath you haven’t any recollection of it, that it was six months ago, and when you are asked a leading question as to whether you said certain words, you have a very clear recollection you did not say them.

Mr. Karesh: That is objected to——

The Witness: The action——

The Court: The witness wants to answer.

The Witness: The action, the allegations which were made [57] in that affidavit by Major Johnston were so astounding and amazing, that I was really astounded at the temerity and audacity of that which Major Johnson said, and which he was not able to back up.

Q. (By Mr. Davis): Well, do you think that under the Army regulations that a man participating as defense counsel, if he believes that a certain thing had been said, that he was audacious in calling that to the attention of the proper authorities?

A. When they are false, yes.

Q. You say they are false; is that correct?

A. That is my statement, yes, and he does not even back his own statements up under oath.

(Testimony of William C. Chase.)

Mr. Davis: May that go out, your Honor?

The Court: Yes.

Mr. Davis: I want to clarify one further point, and that is this: When I asked you if you recalled whether or not you used this language, in view of the fact you had just previously stated that you could not recollect the conversation, you said that you were sure you did not say that because you would not say it. In other words, do you have an independent recollection of any conversation right now? Do you know the language you used?

A. I have a very certain recollection that I did not use that statement. That can be borne out by people who were in the room. [58]

Mr. Davis: I will ask that that go out. I am only asking you not who, if anyone else, was in the same room. I am asking you right now, you say you stated in your affidavit there taken six months before the trial that you could not recollect the conversation, six months after the trial, rather, but you do recollect you did not say what Johnston said you said? A. That is correct.

Q. What I wanted to know is, do you have an independent recollection of the conversation so you can say you did not say it?

A. Yes. I have enough of a recollection of that conversation to say I did not make that statement.

Q. Is that based on the feeling you have or the feeling you would not have made such a statement?

A. It is based on that, and also based on sworn

(Testimony of William C. Chase.)

testimony of people who heard what I said there.

Q. In other words, you are relying upon the testimony of other people as to what you said?

A. I am relying upon my own memory and their testimony, both.

Q. So you do not remember anything about the conversation except you remember you did not use the definite language; is that it?

A. It was a general conversation with General Tansey.

Mr. Davis: That is all.

Redirect Examination

By Mr. Karesh:

Q. General, was Major Johnston present in the room [59] when you had the conversation, or made the telephone call to Tansey? A. He was.

Q. Did you attempt to keep him out of the room?

A. No. It was a public room. No effort was made to keep Major Johnston or anyone else out of the room at all; just as public as this room, right here.

Q. Did Major Johnston or any of the associate counsel challenge you to get off the court at that time, or at any time? A. No.

Q. When you made the inquiry of General Tansey, were you concerned with all of the jewels or only the jewels that were not smuggled into the United States, with particular reference to the second charge and specification?

A. Well, there was that one—we were interested

(Testimony of William C. Chase.)

in the whole case, of course. We wanted the whole picture spread before the court so we could make a fair adjudication of the matter.

Q. Did you ask for that evidence in order to get a conviction, or in order to get a complete picture of the case?

A. We asked for the evidence, as is our right there, in order to get a complete picture of the case before the court, as much for the prosecution as for the defense.

Q. What was the value of the jewels, as you remember, that you found Colonel Murray—you and the members of the court found him guilty of misappropriating? [60]

A. It is in the record, roughly \$200,000.

Q. That was the retail value?

A. That was retail value, yes.

Q. As far as the value of the jewels that were allegedly smuggled into the United States, do you remember the value of those jewels as fixed by the court?

A. The value fixed by the court in their findings was eighty or ninety thousand dollars, I believe, finally.

Q. That is all the jewels that Colonel Murray had——

A. All the jewels, yes.

Q. Any value fixed on the amount of jewels he allegedly turned over to the customs officers who searched him after he had gone down the gang-plank?

(Testimony of William C. Chase.)

A. I believe roughly \$20,000. I may be wrong on that. That is in the record.

Q. During the course of the trial, did Colonel Murray ever deny that he had misappropriated the jewels?

A. No, not that I recollect. He made an unsworn statement before the court.

Q. What was the unsworn statement?

A. That is in the record. The unsworn statement was to the effect these jewels didn't come from the Bank of Japan, as I remember.

Mr. Karesh: That is all. [61]

Recross-Examination

By Mr. Davis:

Q. You say that all of these actions that you took were due to your desire to get the complete picture before the court, that you were motivated in assisting the prosecution as opposed to assisting the defense, and that you just wanted to get the entire picture before the court, in fairness to the prosecution, and in fairness to Colonel Murray?

A. That is correct. That is my duty as president of the court, as I read you this morning.

Q. Isn't it a fact that you granted the continuance to the Government to produce this evidence about which you talked to General Tansey, and after that you denied a motion for the defendant to produce an expert diamond witness to assist in the cross-examination of the witness of the Government?

(Testimony of William C. Chase.)

A. That is correct, but he was later given a very long continuance to prepare his defense in plenty of time to have gotten all the diamond experts in the Far East if he so desired, and he brought none.

Q. But when the motion was made it was denied?
A. That is correct.

Mr. Davis: That is all.

Further Redirect Examination

By Mr. Karesh:

Q. Isn't it true, General Chase, that at your recommendation during the course of the trial you were responsible in getting Colonel Murray out of custody and bringing [62] him to live in a hotel?

Mr. Davis: That is objected to as incompetent, irrelevant, and immaterial.

Mr. Karesh: You say he is so prejudiced and we are asking a question whether the general was not responsible, during the course of the trial, of getting him out of custody.

Mr. Davis: I don't think that would have any material effect on his prejudice one way or the other.

The Court: Well, it would at least show he was feeling kindly toward him.

Mr. Davis: To that extent, yes.

The Court: What is the answer?

The Witness: The defense complained to me that they were having trouble in conferring with the accused, and at that time Colonel Murray was confined in the Eighth Army Stockade, which is some twenty miles or twenty-five miles from the

(Testimony of William C. Chase.)

court, from Yokohama. I interceded with the commanding general of the Eighth Army and recommended and was able to have Colonel Murray released from confinement, and during the remainder of the trial he lived in the Grand Hotel in Yokohama, where he was able to confer with his attorney, and had every bit as good a chance to see everybody and talk to everybody as anybody else. That was done at my instigation as president of the court on the defense request. They told me that they had been turned down once or twice and then I got it fixed up so that he was turned [63] loose and could do business.

Mr. Karesh: That is all.

Mr. Davis: No further questions.

Mr. Davis: If the Court please, I wish to make one further statement: That is this: When I put the petitioner on the stand I asked him certain questions concerning his war record. I brought out that he was a combat officer. At that time it was my opinion, I might say it still is, that I did not believe that anything concerning his war record or his decorations was relevant. My whole purpose in asking that matter was because one of the points I raised in my petition is that he was denied the right of counsel, and I wished to point out the matter of his background, his decorations and positions in the United States during civilian times and during the war, both World Wars, that it was not in an administrative capacity, and he was not the type of man who would have been put on his guard as a

defending counsel. It was limited to that sole purpose.

However, your Honor, in permitting Mr. Karesh to inquire into the general's war record, seemed to think it was relevant that the record and the decorations and the history of the president of the court martial is relevant. If that is true, then I feel, in fairness to the petitioner, that he should be permitted to take the stand to testify as to his war record and as to his decorations. [64]

Mr. Karesh: Is it your contention—you brought out this original reference, was it to show Colonel Murray was not familiar with court martial proceedings?

Mr. Davis: No. I brought it out for the limited purpose of exactly what I stated. I did not think, and I still don't think that it is material to a habeas corpus proceeding whether the petitioner or the president of the court has one decoration or ten, or whether he was in the quartermaster corps or whether he was a combat officer.

The Court: If he wants it in he may have it.

Mr. Karesh: I have no objection. We are not disputing his record.

EDWARD JACKSON MURRAY

recalled; previously sworn.

Direct Examination

By Mr. Davis:

Q. Will you tell the court briefly what your record in the Army has been, as to both the First

(Testimony of Edward Jackson Murray.)

and Second World Wars, as to whether or not you were in any combat zones or fought any engagements, or exactly what you did?

A. In the First World War I was in two combat zones. I personally did not engage in combat. I was in the zones, and was granted the right to wear the bronze star, denoting a combat zone.

In the Second World War I am entitled to wear, or was [65] entitled to wear, three stars for three combat zones, in which I actually participated in combat; the Bismarck Archipelago, Luzon, and South Philippines.

Q. What other decorations, if any, do you have?

A. Well, I was granted the Silver Star decoration, the Legion of Merit, the Bronze Star, Philippines, and the Combat Infantry badge.

Q. Is it true that you led one combat division into one of these islands that was taken?

A. The combat team.

Q. Tell the court briefly what that is, what that means.

A. A combat team is a reinforced infantry regiment. It usually has attached a battalion of field artillery and a company of engineers, and various other auxiliary arms. In mine I had in addition to those a company of tanks, a company of tank destroyers, an ambulance company, a 4.2 mortar company; in all, I had a force of about 4500 men.

Q. Where was that?

A. At Lingayen. My combat team was the second from the left. On the original assault landing

(Testimony of Edward Jackson Murray.)

at Lingayen Gulf my combat team led the whole operation first, until we ran into real organized resistance, and then we turned right, turned off the road and drove the Japs back into the hills. My combat team got 1700 Japs in five days. The rest of the division came up, a part of the 37th Division, one regiment of that [66] on our left. They were pretty badly cut up in one day's fight when they pulled up there. I had in my own regiment, I don't remember the casualty list for the whole combat team, but in my own regiment of 3000 men there were 740 odd casualties in the first five days.

Mr. Davis: That is all.

Cross-Examination

By Mr. Karesh:

Q. You risked losing all these decorations, being stripped of these decorations, for some diamonds?

Mr. Davis: I object to that.

The Witness: I did not.

Mr. Davis: As being argumentative.

The Witness: I did not.

The Court: Just a moment. That has no place here. Let it go out.

Q. (By Mr. Karesh): By the way, these diamonds were not yours that you were charged with misappropriating, were they?

A. Certainly they were mine.

Q. Where did you get them?

A. They were given me.

Q. By whom? A. By an individual.

(Testimony of Edward Jackson Murray.)

Q. Who was the individual?

A. I don't know.

Q. You mean you won't say? [67]

A. I don't know. I do not mean I won't say. If I knew I would say. I cannot tell you his name.

Q. Who gave you the diamonds that you had in your pocket when you walked down the gangplank when Mr. Smith accosted you?

A. The same individual I am talking about. He gave me all the diamonds I had.

Q. How did he happen to give them to you? Did you ask him for them? A. I did not.

Q. Can you explain the circumstances under which he gave you those diamonds?

A. Yes, I can explain it.

Q. Will you? A. Yes.

Q. Go ahead.

A. I was sitting in my room in the Dai Iti Hotel in Tokyo, I believe it was the Sunday night after Thanksgiving, 1945. It was after dinner, in the evening. I don't know exactly what time. I was sitting there reading, and there was a knock on the door. I shouted, "Come in." I thought perhaps it was some friend that was coming in to see me. I knew several people in the hotel. Instead of a friend, the door opened and an individual came into the room whom I had never seen before, whom I have only seen once since.

He came in and asked me if I were Colonel Murray. I said, [68] "Yes," and he said that he had a

(Testimony of Edward Jackson Murray.)

package to deliver to me. I said, "All right." He said, "I haven't got it with me now, but I will bring it tomorrow evening, say about this same time, if you will be in your room." I said that I thought I would be, and after a little more casual conversation this man left.

The next evening he showed up, as he said he would. He came into the room and walked across the room to a desk—I was sitting in an upholstered chair beside the desk, on which was a stand lamp. He walked over to that desk and he took an envelope out of his pocket. He was wearing an overcoat. I think he took it out of the inside pocket of his overcoat, and he dropped that on the desk and he said, "I have been directed to deliver this to you and I have accomplished my mission. Good night." And he walked out. I never saw him again.

I opened the package and in the package were these diamonds.

Q. How many diamonds?

A. I don't know. I didn't know then. I think there were approximately 500. I never did count them. Some diamonds were in the paper—there was no mark—it was not a package, it was a large envelope. There was no mark on the envelope, no mark in the envelope that I could see.

Some of the diamonds were wrapped up in tissue paper, the small ones, and one lot of very small diamonds, I think someone mentioned it and said there were something like 300, [69] a very small

(Testimony of Edward Jackson Murray.)

package that these little diamonds were in, and some of the larger ones were also wrapped up individually in tissue paper. Then there was some that were wrapped three, four or five together. Why, I don't know. Some of them were not wrapped at all.

I took those diamonds and I put them in a little card box, a cardboard box, in which I had some calling cards. They were put into the box and I put the calling cards back on top of them. That box was approximately two inches long, one inch wide, and I suppose, one inch deep, a very small box.

Then I put the diamonds in my trunk. That is how I received them. Now, what is your next question?

Q. Well, when you came down the gangplank you had filed a baggage declaration, had you not, in San Francisco, at the time Mr. Smith accosted you? A. That's right.

Q. And you had not in your baggage declaration listed the diamonds, had you?

A. I had what?

Q. Had you listed the diamonds in the baggage declaration made with the customs before you were accosted by Mr. Smith? A. No.

Q. Will you explain why you did not?

A. Because I only had the four diamonds with me then; the same diamonds I had brought in previously and taken back to Japan and [70] brought them back. I did not feel as though I should list

(Testimony of Edward Jackson Murray.)

those diamonds I had taken away from the United States back to Japan and brought them back again.

Q. Why did you take them back to Japan and bring them back to the United States?

A. Because I simply forgot they were in my pocket when I got on the boat to go back to Japan.

Q. Do you know the value of those diamonds?

A. I do now.

Q. How much?

A. Approximately \$8000, I think, somewhere around that. That was the valuation put on them at the time of my trial.

Q. Do you know the value of the 500 diamonds?

A. I think I heard eighty thousand odd dollars, the statement that is in there. That is the only way I know what they are.

Q. Can you describe the man that you saw in the hotel?

A. Well, after a fashion I can. He was an Oriental. He was rather slim, probably five feet seven inches. He wore a gray overcoat, I think gray, dark gray. He had on a dark suit. I don't know just what shade it was. As most of those Japanese were there, his shoes were rather shabby. He had one characteristic that I noticed particularly, and that is the fact that he did not have that characteristic Mongolian eyelid. There are some Japanese that do not have it; most of them have, but [71] some don't. That is about all. He was evidently a man of some education. He spoke faultless English. He treated me as an equal.

(Testimony of Edward Jackson Murray.)

Q. It was your opinion then that he gave you those diamonds? A. Yes, it is.

Q. Did you report the alleged gift of this man to your superiors?

A. I did not. Why should I?

Q. Tell me, what happened to the other four hundred ninety-six diamonds after you got them? What did you do with them, that is, distinguished from the four?

A. Are you sure you are not a little bit mixed up?

Q. No; I am not mixed up; you said you got 500 diamonds. You walked down the gangplank with four of them. *That* did you do with the rest?

A. I brought all the diamonds I had, we will say 500, I am not sure exactly 500, but say 500; I brought them all to the United States when I came home and I think the ship landed in San Francisco, or, rather, in Oakland Army Base, on the 24th of—No, the 4th of April, 1946. I brought all the diamonds home at that time.

Q. Where did you put them?

A. I gave them to my wife, all of the diamonds. Then I was on 45 days leave. We traveled around the State among our friends, and we took those along with us, and showed them to [72] various people. Every time we would go anywhere we would show them to our friends. I used to carry a couple of them, as I say, these four I had in my watch pocket of my trousers. I just carried them around.

(Testimony of Edward Jackson Murray.)

When I left, when I went back to Japan in the latter part of May I was to sail from Seattle, my orders called for me to sail from Seattle. I took the ferry down here at the Ferry Building, and I had those four stones in my watch pocket.

My wife drove me down to the Ferry Building, and I said good bye to her there. While I was on the train that night, going to bed, getting into my berth, somehow or other I put my finger in this pocket and I discovered I still had those. I had forgotten to give them back to her, so I just left them there. I took them back to Japan with me. That was in June of—the ship sailed on June 12, I think, and we arrived on the 24th in Yokohama, June, 1946. Those are the four stones I brought back with me in 1947.

Q. At the time this person, as you say, gave you the paper container of diamonds, what were your duties as an officer of the U. S. Army?

A. I was officer in charge of the Eighth Army Vaults of the Bank of Japan.

Q. Did you believe he was giving you these diamonds to put into the bank?

A. I certainly did not or I would have put them in the bank. [73] I have received diamonds and other valuables at various times and they have always gone in the bank when they were intended to go in the bank. I have always given receipts for them. This man brought this in and told me they were for me. He put it down there.

(Testimony of Edward Jackson Murray.)

Q. You had never seen the man before that time?

A. I had never seen this man before.

Q. You had no idea why he brought you the diamonds?

A. I have an idea, yes.

Q. What is your idea?

A. The day after Thanksgiving, I think Friday, or it may have been Saturday, I had occasion to go down to Yokohama—1945—to see my superior, who was the military government officer for the Eighth Army, Eighth Army Headquarters was in Tokyo. I had a jeep. I drove my jeep down there, transacted my business, and I was coming back to Tokyo in the afternoon. I don't remember just what time. Well, it was just getting dark. Now, the distance between the Customs House in Yokohama in which was housed the headquarters, Eighth Army, and Central Tokyo, just near the Dai Iti Hotel, across the road, is just about 25 miles. About two thirds of this distance is Tokyo, the rest of the way is Yokohama. The two cities come together. There is no open space between them except that our bombers had burned out probably half or more of all the buildings in this distance. There were various places along this road where [74] there were some buildings that had not been burned. Some are as large as a city block, some would be several blocks, some would be only one building. In looking across that expanse, you just see a maze of chimneys sticking up. That is about all there was, except for

(Testimony of Edward Jackson Murray.)

these little places where buildings had not been burned.

About probably eight miles from Central Tokyo there was a place where the railroad crosses over the so-called highway. It was in terrible condition then. The road makes a small "S" turn, not very pronounced, under the railroad, and from either side you can see the road through this "S" turn. I was coming north from Yokohama just about dusk. As I passed under this underpass I could see the lights of a car ahead. They were, I don't know just how far, probably half a mile. That is, the car was facing me. Behind me was another set of lights. I could see those behind me in my rear view mirror. They just had been turned on a little while, as had my own lights. Just as I cut under this underpass and saw this car approaching me, I got closer to it and I could see the lights of another car approaching me. It looked as though they were maybe a mile or less than a mile behind the lights of the first car. As I approached that first car, I saw it was stopped there. As I got real close to it I saw there was something going on in the road. As I got closer I could see some men struggling in the middle of the road, there. Their car was stopped [75] on the side of the road facing Yokohama.

As I got close enough and my lights began to show plainly this car I saw what I thought were two American soldiers struggling with somebody on the road. I stopped my jeep as I got opposite. My in-

(Testimony of Edward Jackson Murray.)

tent was to get out and see what I could do to help these soldiers. As I stopped my jeep and moved across the road the two soldiers, if they were soldiers, they jumped up and ran; they ran behind this car, ran off to what would be the easterly side of the road and disappeared in some shacks that were along the road.

I did not know what to make of that. This individual who was on the ground got up. I saw he was evidently the driver of this car that was standing there. I was quite amazed at what had happened, of course, and I looked at him, and he evidently saw that I was coming across there, or had scared these people off who were manhandling him. So he got up and hissed at me and bowed and "Sank you, Sank you, Sank you." That is all he could say.

About that time the back door of this car opened. It was a big car. A portly-looking individual stepped out. He began to thank me quite profusely, pretty good English. I said, "What is going on here?" He said, "Oh, that is slight mistake, everything is quite all right."

I could not make heads nor tails of it. So I said, "Well, are you all right? How about this chap, here?" [76]

By that time he had wiped himself off a bit and turned and got into the right side of the car behind the wheel and started the engine. This portly gentleman, he seemed to be elderly, I couldn't see

(Testimony of Edward Jackson Murray.)

him very well, he asked me my name, and I told him, and he asked where I lived, and I told him, and he thanked me profusely, got in his car, and that was the end of the incident as far as I was concerned.

I went back to my jeep, got in the jeep, and drove back to Tokyo.

Now, I think that—Well, you don't want my opinion. That is just my opinion.

Q. Well, go ahead. A. Oh, no.

Q. You think it was that man?

A. No, it was not that man, because he was a portly individual. This other chap was slim. What I was saying, I think these two fellows were hijacking these people in this car, and what they had in the car I haven't any idea, but I think this young man, the younger man who came to see me and gave me the diamonds, I think he was sent by this other individual, or who else was in the car. I could see two people in the back of the car. I don't know. I think the diamonds were sent to me as a reward. That is my opinion; that is my belief.

Q. When you brought in the 500 diamonds originally, you did not declare them with the customs?

A. No.

Q. Can you explain why you did not do that?

A. I felt that I did not have to. I brought them home to give as gifts. I knew there was—as a matter of fact, I knew nothing about customs. I don't travel internationally. I don't know anything about

(Testimony of Edward Jackson Murray.)

customs. I know, of course, that there is such a thing as customs, but I brought them in because I did not know they were—I was not used to diamonds, I had no experience with diamonds in my life up to that time. I had no idea what their worth was. They were pretty things. I brought them in and gave them to my wife.

Q. She sold some of them?

A. She sold some.

Q. When you brought back the four diamonds you knew they were valuable? A. Yes.

Q. Yet you did not think to declare them with the customs?

A. No. I did not think to declare them for customs, because I had already had them in the United States and took them from the United States with me and brought them back to the United States.

Q. And that was one of the things for which you were tried by the court-martial, allegedly smuggling in diamonds? A. Yes.

Q. That's right? [78] A. That's right.

Q. You are experienced with courts-martial?

A. Very limited.

Q. You were familiar with the set-up of courts-martial?

A. Yes, in a way. I was no expert at it.

Q. Did you ever sit on any court-martial?

A. Yes.

Q. General courts? A. Two.

Q. Weren't you also the appointing and review-

(Testimony of Edward Jackson Murray.)

ing authority of special courts? A. Yes.

Q. For how long?

A. A matter of five years—not that long; four years.

Q. You had counsel, of course, at the time of this trial, to defend you in this trial, Major Johnston? A. Yes.

Q. You had associate counsel?

A. But the counsel I asked for was refused me.

Q. Who was that?

A. Colonel Woolworth. He was the man I wanted. He was refused me. Major Johnston was appointed counsel. Whether it was done deliberately or not, I don't know, but Major Johnston, he was not a lawyer. The only experience he ever had as counsel was on some special court cases. I have no complaint about Major [79] Johnston. He did the best he could. But that was his background. That was a man who was appointed for me, and I had to squawk like the devil to get Colonel Tressler, who had some law experience.

Q. Colonel Tressler was a lawyer, wasn't he?

A. Yes.

Q. He was associate counsel?

A. That's right, but the man I wanted was refused. He was available to help.

Q. Didn't Colonel Woolworth assist with the preparation of the trial in your behalf?

A. Not that I know of. I was put in the Eighth Army stockade incommunicado. I landed there on

(Testimony of Edward Jackson Murray.)

the 18th of February and the written orders to the commanding officer of the Eighth Army stockade were that I was to be kept incommunicado. I saw no one except the investigators that the Eighth Army sent down there, Colonel Hood and his men sent; they were the only people I was allowed to see. I was forced to see them. I was allowed to see no friends, no counsel, no nothing, until the 11th day of March, after the charges had been preferred against me, Major Johnston came out there.

Q. When you talked to the customs officials in San Francisco they did not threaten you, did they, or use any force upon you?

A. None, whatever. [80]

Q. The statement you gave them was free and voluntary, wasn't it?

A. Yes, I guess—I suppose it was.

Q. Tell me, do you think that Major Johnston did not represent you adequately? Do you have a complaint about his representation?

A. I have no complaint about what he did to the limit of his ability, but I am no law expert, myself. I couldn't tell when Major Johnston was making a mistake. I don't believe I was adequately represented when they wouldn't let me take the man I asked for who was available.

Q. How about Colonel Tressler?

A. Colonel Tressler, I had never heard of him before, never seen him or never heard of him. He was brought in there—not after the trial started,

(Testimony of Edward Jackson Murray.)

before the trial started—I don't know how long it was, a week or so after Johnston had come out. I don't say Colonel Tressler didn't do the best he could. I was not represented by the people I wanted. I can't say that they did not have my confidence as far as it went, but I did not believe then what I have told you in court today.

Q. As a matter of fact, you know under the Articles of War you are not entitled to pick your particular counsel; you know that?

A. I certainly do not. I say that I am entitled to pick my counsel if he is available.

Q. Are you certain he was available?

A. I am certain he was available. I know it. He has told me that, [81] himself.

Q. Wasn't he around at the time you were tried?

A. He was not.

Q. Where was he?

A. He was in Tokyo. I was in Yokohama.

Mr. Karesh: That is all.

Redirect Examination

Mr. Davis: Just one or two further questions, your Honor, in the interest of clarification and for the benefit of the record. Mr. Karesh continuously refers to 500 diamonds. Actually, a large number of those diamonds were industry diamonds, very small, weren't they?

A. They were very small, yes; probably 1/10th of a karat.

Q. About how big?

A. Not much bigger than a pinhead.

(Testimony of Edward Jackson Murray.)

Q. They made up most of the number?

A. Yes.

Q. How many diamonds were there of what we would consider as diamonds of any size, such as appearing in a ring?

A. There may have been, I really don't know, 30, maybe.

Q. So you would say you would think there were about 30 diamonds comparable to what we might be familiar with in a ring, and the others were the small——

A. That is my guess.

Q. That was about the size of the head of a pin? [82]

A. Yes.

Q. Did you have any idea at the time you received those diamonds or when you first brought them into the United States, of their value?

A. I had absolutely none; absolutely none.

Q. The first time that you came in did any customs officials present you with any declaration of baggage?

A. They did not.

Q. You were not requested to make any declaration the first time you came in?

A. I was not.

Q. What happened the first time, were there any reasons given by customs officers to you about it?

A. Not that I know of.

Q. The first time you merely walked off the ship?

A. I walked off the ship.

Q. The second time you were presented with a declaration?

A. Correct.

Q. That was the usual customs declaration, as you recall it, it is an exhibit here, was it not, that

(Testimony of Edward Jackson Murray.)

asked you to swear and take an oath that the following property in possession of the person was acquired abroad; is that correct?

A. I don't remember the wording.

Q. In any event, you felt—As a matter of fact, your Honor, it is the law that even if he had brought the diamonds in on a previous occasion and the customs did not find them, if he [83] brought them out and took them back in again they are not to be declared under the customs law as a baggage declaration.

In any event, that is what you felt, because you had them in once and took them back with you, that you did not have to declare them a second time?

A. That is the way I felt.

Q. You say when you had these diamonds here with you you did not make any attempt to hide the diamonds or to not disclose to your friends and associates that you had them?

A. Absolutely not. We showed them to all our friends. I did not try to hide them.

Mr. Davis: Nothing further.

Recross-Examination

By Mr. Karesh:

Q. How much money did you get for the diamonds that you actually sold? A. \$13,000.

Q. What has happened to these diamonds, did the Army get them back?

A. The Army has them, as far as I know.

Q. You felt that Colonel Tressler could not do

(Testimony of Edward Jackson Murray.)

for you what Colonel Woolworth would?

A. I never heard of Colonel Tressler.

Q. You knew at that time Colonel Woolworth was a member of the International Tribunal?

A. Of course, I knew it. [84]

Mr. Karesh: Nothing further.

Mr. Davis: I have no further questions.

Mr. Karesh: Nothing further.

The Court: Is the case submitted on both sides?

Mr. Davis: Yes, your Honor, with the understanding that we had this morning as to the brief and the argument.

(It was then agreed that petitioner would have two weeks in which to file a brief, the respondent would then have two weeks in which to file a brief, and the petitioner would then have one week to reply, and the matter was set for May 2, 1949, for oral argument.)

Mr. Karesh: May the record show, your Honor, that these documents which Mr. Davis has filed were furnished him by our office, through the courtesy of the Judge Advocate General's Office in Washington; we have given him the original files which he filed; also copies of complete records, so that he could prepare his brief. [85]

Friday, April 22, 1949

Mr. Davis: I will stipulate that if General Chase was brought back here and examined, or if he made an affidavit, that he would state that he did not

make the statement on page 42 of the transcript of testimony.

The Court: And that if he did he was in error, he did not so intend.

Mr. Davis: I will stipulate that he would say, either in affidavit or on direct examination, that he did not make the statement appearing on page 42 of the transcript at line 10, "At that time I did say that we wanted more evidence in order to get a conviction." And if he did say it, he was mistaken, and he intended to say, "At that time I did not say that we wanted more evidence in order to get a conviction." [86]

The Court: That will be stipulated for all purposes?

Mr. Karesh: That is stipulated. [87]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO
RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States for the Northern District of California, do hereby certify that the foregoing and accompanying documents and exhibits, listed below, are the originals filed in this Court, in the above-entitled case, and that they constitute the Record on Appeal herein, as designed by the parties, to wit:

Petition for Writ of Habeas Corpus.

Order to Show Cause.

Stipulation.

Return to Order to Show Cause and Exhibit
“A”.

Order for Issuance of Writ of Habeas Corpus.

Copy of Habeas Corpus.

Return to Writ of Habeas Corpus.

Order Permitting Filing of Amended or Supplemental Petition.

Amendment to Petition for Writ of Habeas Corpus.

Supplemental Return to Writ of Habeas Corpus.

Order Discharging Writ.

Stipulation Extending Time Within Which To File Proposed Findings.

Stipulation Extending Time Within Which To File Proposed Findings.

Findings of Fact and Conclusions of Law.

Notice of Appeal.

Statement Of Points Upon Which Appellant Intends To Rely Upon Appeal.

Designation of Contents of Record on Appeal.

Order Re: Exhibits on Appeal.

Reporter's Transcript—Vol. 1—March 28, 1949.
Vol. 2—April 22, 1949.

Plaintiff's Exhibits 1-A, 1-B and 2.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court, this 13th day of October, A. D. 1949.

C. W. CALBREATH,
Clerk.

[Seal] By /s/ M. E. VAN BUREN,
Deputy Clerk.

[Endorsed]: No. 12380. United States Court of Appeals for the Ninth Circuit. Edward Jackson Murray, Appellant, vs. Lieutenant General Albert C. Wedemeyer, United States Army, Commanding General, San Francisco Port of Embarcation, Fort Mason, California, Appellee. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed October 14, 1949.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
For the Ninth Circuit
No. 12380

In the Matter of the Application of
EDWARD JACKSON MURRAY, for a Writ of
Habeas Corpus.

STATEMENT OF POINTS UPON WHICH
APPELLANT INTENDS TO RELY AND
DESIGNATION OF PORTIONS OF THE
RECORD FOR THE CONSIDERATION
THEREOF

The Appellant adopts as his Statement of Points on Appeal the Statement of Points in the certified typewritten Transcript of Record.

The Appellant designates for printing the entire certified typewritten Transcript of Record.

Dated: September 29, 1949.

/s/ JAMES T. DAVIS,
Attorney for Appellant.

Receipt of copy acknowledged.

[Endorsed]: Filed Oct. 19, 1949.

[Title of Court of Appeals and Cause.]

ORDER THAT PORTIONS OF THE RECORD
NEED NOT BE PRINTED

Good Cause Appearing Therefor, It Is Hereby Ordered that Petitioner's Exhibits 1-A and 1-B need not be printed as part of the Record on Appeal, but may be considered in their original form and in such form shall be considered a part of the Record on Appeal; provided further that excerpts from said Exhibits may be printed as an appendix to Petitioner's opening brief.

Dated: This 20th day of October, 1949.

/s/ WILLIAM HEALY,
/s/ HOMER T. BONE,
/s/ WALTER L. POPE,

Judges U. S. Court of Appeals
for the Ninth Circuit.

[Endorsed]: Filed Oct. 24, 1949.

[Title of Court of Appeals and Cause.]

STIPULATION AND ORDER SUBSTITUTING PARTY AS RESPONDENT-APPELLEE

It is hereby stipulated by and between counsel for the parties hereto that Albert C. Wedemeyer, Lieutenant-General, United States Army, Commanding General of the 6th Army, be substituted as Respondent-Appellee in the place and stead of James A. Lester, Major-General, U. S. Army, Commanding General of the San Francisco Port of Embarkation, Fort Mason, California.

Dated: This 28th day of October, 1949.

FRANK J. HENNESSY,
United States Attorney.

By /s/ JOSEPH KARESH,
Assistant U. S. Attorney.

/s/ JAMES T. DAVIS,
Attorney for Appellant.

It is so ordered this 31st day of October, 1949.

/s/ WILLIAM HEALY,
/s/ HOMER T. BONE,
/s/ WALTER L. POPE,
Judges U. S. Court of Appeals
for the Ninth Circuit.

[Endorsed]: Filed Nov. 2, 1949.